

PAPERS

OF THE

AMERICAN HISTORICAL

ASSOCIATION

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VOL. V .

JULY, 1891

PART 3

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NEW YORK & LONDON  
G. P. PUTNAM'S SONS  
The Knickerbocker Press

Entered at the Post-Office, New York, N. Y., as Second-Class Mail Matter

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1891

The Knickerbocker Press, New York  
Printed and Bound by  
G. F. Putnam's Sons

THE FATE OF DIETRICH FLADE





## THE FATE OF DIETRICH FLADE.

By Professor GEORGE L. BURR, Cornell University.

When, just three hundred years ago, in the spring of the year 1589, it was whispered abroad in Europe that no less a personage than Dr. Dietrich Flade, of Trier,<sup>1</sup> city Judge of that oldest of German towns, Dean of its juristic faculty, ex-Rector of its university, a councillor of the Archbishop-Elector himself, had been put on his trial for witchcraft, men turned with a shudder of interest to watch the result. And when, in mid-September of that year, there came the further tidings that he had been convicted on his own confession and burned at the stake, pious folk everywhere drew a long sigh of relief that at last a ringleader of the horrid crew of Satan had, spite of money and influence, been brought to the fate he deserved. No voice anywhere was raised in protest or in question. No word of pity found its way into print.

But never again, even in Germany, did the persecution strike so high. Though two centuries of witch-burning followed, Dietrich Flade remains to our day its most eminent victim in the land of its greatest thoroughness. And in these later years of failing faith men have dared to ask whether he was, after all, guilty of the preternatural crime laid to his charge, and to wonder what other cause may have brought the accusation which cost his life. Wide has been the field of conjecture. Was he, perhaps, a martyr who brought suspicion on himself by opposing the persecution of others? Was he a heretic, whose politic foes found

<sup>1</sup> Better known to us, though a German city, by its Gallicized name of Treves, or Trèves.

it easier to burn him as a witch than as a Protestant? Was he only a corrupt magistrate, for whom this seemed the most convenient method of impeachment? Did he but owe his death to the malice of some spiteful criminal,—to the cunning of some private foe,—to the greed of some heir who coveted his wealth? Each of these theories might be sustained by contemporary hints, and either is but too sadly plausible in the light of what we know of his time; but the scholars who have thus speculated as to the fate of Dietrich Flade have been forced to add that the one document which might have answered their question—the minutes of his trial—has long been lost to research.<sup>1</sup>

That document lies before me<sup>2</sup>; and it is upon the basis

<sup>1</sup> What has been known about Flade is, all told, very little. Just before the middle of the last century, Hauber, stirred to curiosity by the allusion of Delrio, discussed his fate in the chapter of his *Bibliotheca magica* which has remained the main source for all later historians of witchcraft; but, beside Delrio, Hauber had no materials save the bare mention by the contemporary Cratopolius. Later in the eighteenth century, the eminent Trier historian and Vice-Bishop, Hontheim, gave to Flade a foot-note of sympathetic appreciation; while the Trier jurist, Neller, on the other hand, blackened his fame by resurrecting for a student's thesis the Elector's letter to the theological faculty (see page 36 below). In 1817, the city librarian, Wyttenbach (in his *Versuch einer Geschichte von Trier*, published as a serial in the *Trierischer Adresskalender*, 1810-22), would gladly have told more about him; but the records of his trial, which were known to have shortly before existed at Trier, Wyttenbach could not find, though he found men who had read them. In 1818, however, the Echternach antiquary, Clotten, produced what seemed fragments of them. They were printed by Müller (in the *Trierisches Wochenblatt* for 1818, Nos. 49-51), and were afterward given to the city library at Trier, in whose keeping they still are. When, a few years later, the two last-named historians (Wyttenbach and Müller) published their edition of the *Gesta Trevirorum*, they added to its third volume (1839) a valuable note on Flade. The later histories of Trier, including even the elaborate work of Marx, add nothing to our knowledge of him. The article upon him, by Professor Dr. Kraus, in the *Allgemeine deutsche Biographie* contributes, however, one or two fresh facts.

<sup>2</sup> Since 1883 it has been in the possession of the President White library at Cornell University. Glancing through an old-book catalogue issued, late in 1882, by Albert Cohn, of Berlin, my eye lit on the title of this manuscript. I laid it before President White, who at once, spite of an inaccuracy in the name, divined that it was the trial of Dr. Flade, whose case he knew well through his researches in this field. We ordered it forthwith, and were overjoyed both to secure it and to find it what we had hoped. Of its earlier fortunes I have

of this and of other papers<sup>1</sup> which have hitherto escaped the historians that I wish to discuss once more the story of his life.

For at least three generations the Flades had been loyal servants of the Electors of Trier. Before the close of the fifteenth century Hupert Flade had left his Luxemburg home at St. Vith to enter the archiepiscopal *Kanzlei*; and he had received more than one substantial recognition of his worth as a secretary before he found himself snugly

been able to learn only that it was for a time in the possession of the well-known Cöln bookseller, Lempertz, who offered it in a catalogue of 1874. Whence it had come into his hands he could in 1886 no longer remember. It was bought from him by a Cöln collector, at the dispersion of whose library it drifted to the shelves of the Berlin dealer. Wyttenbach's words as to its loss are: "Bis auf unsere Zeiten waren die Originalpapiere dieses Prozesses aufbewahrt worden; aber sie sind entkommen, man weiss nicht wohin. Ich habe sie nie gelesen; aber man sagt mir, dass darin der Doctor der Zauberey selbst geständig gewesen." It is possible that, with so much else, they went astray during the French occupation. I hope to print the manuscript as an appendix to my forthcoming catalogue of the President White collection on witchcraft. It is a folio, neatly written in a *Kanslei* hand familiar to the contemporary records at Trier. Of its original 126 leaves, the first is detached and sadly worn; the second is wholly gone (I have fortunately been able to supply its contents from the fragments at Trier), while ff. 105, 106 (a part of Flade's confession—the later *Urgicht* suggests their substance) have been rudely cut out, their stubs remaining. Else the document is complete, beginning with the first calling together of the court, and ending with the execution. The Clotten fragments (see last note), still preserved at Trier, were never a part of it, but are rather the original papers from which this final protocol was drawn up. They comprise: (1) Most of the Fath report, in what I believe the handwriting of that commissioner; (2) all the miscellaneous reports therewith submitted to the court by the Elector (see note on page 32 below); (3) the minutes of the proceedings connected with Flade's arrest, in the handwriting of the court clerk, Wilhelm von Biedborgh; (4) three more or less complete reports of the first examination of Flade, partly in the handwriting of Biedborgh, partly in a *Kanslei* hand resembling that of our own protocol. These could not have been what Wyttenbach's informant had seen, for they contain nothing of Flade's confession, nor indeed of his trial proper. A brief account of our own manuscript, by Dr. William H. Carpenter, now of Columbia College, was published in the library bulletin of Cornell University in April, 1883.

<sup>1</sup> Of these the most important are: (1) The annual reports, manuscript and printed, of the Trier Jesuits; (2) the remains at Trier of the judicial records of the witch-trials; (3) the significant passages of Brouwer and of Binsfeld. There has been, indeed, hitherto no attempt at investigation of the case.

established as Cellarer, or Steward, of the Electoral estates at Pfalzel, on the Moselle, just below Trier.<sup>1</sup> His son, Johann,<sup>2</sup> the father of Dietrich, rose to the responsible position of town clerk of the neighboring city itself.

When Dietrich Flade was born, or where he gained his education for the law, does not appear. Inheriting position and wealth, he would seem to have early devoted himself to

<sup>1</sup> Thus, on December 31, 1495, the Elector "verschreibt dem Hupert Flade eine iahrrente von 4 malter frucht und 4 ohm wein"; on June 25, 1499, he "giebt seinem kanzeischreiber Hupert Flade von St. Vyt und dessen chefrau Margaretha Kellners von Ellenz anstatt einer weinrente von 4 ohm, auf lebenszeit einen wingert zu Fankel"; and on June 28, 1499, he "belehnt denselben Hupert Flad mit 4 wingerten zu Ellentz" (Goetz, *Regesten d. Erzb. zu Trier*). These last gifts were, perhaps, on the occasion of Hupert's marriage. Both Fankel and Ellentz are on the Moselle, near Cochem, whence the deeds of gift are dated. That Dietrich was a grandson of Hupert, there can, I think, be little doubt. In the *Neue Zeitung* of 1594 (see note on page 45 below), the ill-fated judge is himself spoken of as "von Kochheim an der Mosel." That Hupert Flade became later Electoral Cellarer at Pfalzel, we know, on his own testimony, from a paper (in codex 1753 of the Stadt-Bibliothek at Trier), dated "anno 1504 more Trev.," drawn "durch mich Huprechten Flade von Sant Vyt Kelner zu Paltzel," and signed "Hupt Flade." That Dietrich Flade, too, held property at Pfalzel is known to Dr. Kraus (see his article on Flade in the *Allgemeine deutsche Biographie*) from the Pfalzel church records.

<sup>2</sup> That Johann Flade was Dietrich's father is assumed without question by Wyttenbach and Müller (in their note to the *Gesta Trev.*), and is certainly probable. In a manuscript still preserved in the City Library at Trier, an account of "Wie Frantz von Sieckingen den Stifft beschediget und . . . diess Stat Trier belegert hait" in 1522, compiled from the city records by order of the Rath, and written by Johann Flade's own hand, he speaks of himself as "mech, Johannem Flade vonn Sant Vyt der Stat Trier Secretarien." He still held this office in 1556 (Hontheim, *Hist. Trev. Dipl.*, ii.), but in 1559 had given place to a successor (Peter Dronkmann).

As to the proper spelling of the name Flade, there can be no doubt; for, though it appears under various disguises (Flad, Fladt, Vlaet, Fladius, Vlaetius, Flattenus) in contemporary sources, all the autographs of the Flades agree in this form. There lies before me an autograph receipt, given officially by Dietrich Flade, June 28, 1587 (I owe it to the scholarly generosity of Dr. Conrad Coppers, of Köln), in which he signs himself "Dietherich Flade doctor | Chfl. Tr: Rhat vnd Schultes | zu Trier." The seal (*Petschaft*) attached bears his arms and the initials "T. F. | L. D." (Theodoricus Flade, Legum Doctor?) I have found among the documents of the Trier City Library only two bearing his signature, though there are several in his handwriting. Dr. Kraus (in the *Allg. deutsche Biog.*) cites two other signatures. All are written "Flade."

political life; and we first meet him, in 1559, as a councillor of Johann VI., the ablest and most energetic of the Electors of Trier in that half-century. It was the critical time of the Protestant attempt to introduce the Reformation into Trier, and the young jurist was added to the important Commission charged with the suppression of the disorder.<sup>1</sup> A fellow-member of that Commission, the Cathedral-Dean, Jacob von Eltz, became eight years later the successor of Johann VI. on the archiepiscopal throne; and it was probably to Jacob III., whose best claim to the gratitude of posterity lies in his care for the courts of his province, that Dietrich Flade owed his appointment to one of the highest judicial positions in the land—the headship of the civil court at Trier, which carried with it an assessor's seat on the bench of the supreme tribunal of the Electorate at Coblenz.<sup>2</sup> And when, a few years later, he was honored with the degree of Doctor of the Civil and of the Canon Law,<sup>3</sup> a career

<sup>1</sup> "Sexto Septembris" [1559], says Brouwer (*Annales Trev.*, ii., p. 389), "junxere se Principis legatis Jacobus ab Eltz templi primarii Decanus, . . . Theodoricus Fladius, et Jacobus Henselius jureconsulti." (Yet, a little earlier, Brouwer names the same "Theodoricus Fladius" among the members of the original Commission—a manifest inconsistency, and doubtless an oversight.)

<sup>2</sup> His appointment dates, perhaps, from the Elector's "*Reformatio judicii scabinalis Trevirensis*," in April of 1569. In July of that year the edict reorganizing the Coblenz court, names among the assessors "Diederichen Flade, unsern Schultheisen zu Trier, etc." (Hontheim, *Hist. Dipl. Trev.*, iii.). The office brought with it, too—in Flade's case, at least—the judgeship of the jurisdiction of the Cathedral Provost at Trier. Thus, in a collection of "Urfehden," etc., of the Domprobstei, from the years 1581-93 (codex 1500 of the Trier Stadt-Bibliothek), an Urfehde of July 29, 1581, is in his handwriting, and a slip of December, 1583, is addressed to "d. Ern. u. Hochgel. Herr Dietherich Flad, als Schultheiss der Dhom Probsteien zu Trier." Very vivid becomes his relation to the criminal justice of the city, as one comes upon a note to him (of May 9, 1572) announcing that the town council "sei willigh Iren Ern: wie von alters den armen gefanghenen menschen mit seiner urgicht, so ihn Sant Simeons Thorn [the old Roman *Porta Nigra*] gefanghen ligt, zu lieberen"; or when one finds, appended to the protocol of the trial of the robber Sontag of Crittenach, in 1574, an account of his formal surrender by the city authorities to Dr. Flade, with the formulæ spoken by the Stadt-Zender and the Judge, respectively.

<sup>3</sup> At some time between 1570 and 1573. An autograph letter of Flade's to the Elector (in codex 1775 of the Trier Stadt-Bibliothek), dated February 6, 1570



successful and happy seemed assured to him. By his sovereign, at least, he must have been counted a not unworthy servant; for when, in 1580, the decision of the Emperor Rudolf put an end to the century-long struggle of the city for its civic independence, and the triumphant Elector reorganized the government of the town, the jurisdiction of the city court was greatly increased and Dietrich Flade remained at its head, receiving in virtue of his office not only an important seat in the newly framed town council, but becoming the Vice-Governor of the city.<sup>1</sup>

Nor was his domestic outlook less bright than his public one. His wife, a Homphaeus of Cochem,<sup>2</sup> was a kinswoman of the great Emmerich humanist of that name; and her brother, Christoph, a fellow-jurisconsult in the service of the Elector, had, though a layman, been for a time entrusted with the weighty duties of the Officialate at Trier, while another brother, Peter, was Dean at Pfalz. His own

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<sup>1</sup> Hontheim, *Hist. Trev. Dipl.*, iii.

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<sup>3</sup> For the brothers Homphaeus, see Hontheim, *Hist. Trev. Dipl.*, ii., pp. 550, 553, 554, iii., p. 44, and Marx, *Geschichte d. Erbstifts Trier*, ii., p. 494. In 1576, Agricius dedicated a poem to these two "durch Gelehrsamkeit ausgezeichneten Söhnen des Christoph Homphäus zu Cochem" (Marx, ii., p. 511). Peter, the Emmerich teacher, is said to have been the uncle of these two. For Flade's relationship, see Flade trial (it is thus that I shall cite the manuscript described above, p. 2), pp. 70, 80, 130, and also pp. 29, 33, 34, of the present paper. Christoph Homphaeus died not later than 1587. The younger Peter (see p. 28 below), who himself narrowly escaped trial for witchcraft, lived till 1600. Thirty years he was Dean at Pfalz, and twice was Rector of the University of Trier.

brother, Dr. Franz Flade, was high in favor at Speyer.<sup>1</sup> At least one son, too, had come to gladden his home.<sup>2</sup>

But the storm that was to rob him of fortune, fame, and life was already brewing all along the horizon. The witch-trials, which, during the earlier part of the century, had appeared only sporadically, were settling here and there into organized persecutions. In the neighboring Lorraine, the terrible Nicolas Remy was already exercising that judgeship, as the fruit of whose activity he could boast a decade later of the condemnation of nine hundred witches within fifteen years; and just across the nearer frontier of Luxemburg, now in Spanish hands, the fires were also blazing.<sup>3</sup> Nay, the persecution had already, in 1572, invaded the Electorate itself.<sup>4</sup> It was in that year that, in the domain

<sup>1</sup> See Flade trial, p. 89, and p. 29 below. He, too, at the beginning of his career, had served the Elector of Trier; at least, a "Dr. Franz Fladt" is mentioned (by Marx, i., p. 377, citing v. Stramberg's *Moselthal*) as taking part, on December 1, 1566, in the forcible re-establishment of Catholicism at Cröff, in the "Cröverreich."

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of the abbey of St. Maximin, whose long contest against the temporal jurisdiction of the Elector had been closed by an imperial decision in 1570, a poor creature named Eva, from the village of Kenn, imprisoned and convicted on a charge of child-murder, was dragged from her cell and, in the absence of the magistrate, tortured further into a confession of witchcraft. Two old women implicated by her went with her to the stake; and two more victims of her accusations were still under the torture when our record of the episode breaks off.<sup>1</sup>

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magazine series (with a running appendix of witch-trials), by the Coblenz jurist, A. F. J. Liel, on *Die Verfolgung der Zauberer und Hexen in dem Kurfürstenthume Trier* (in the *Archiv für Rheinische Geschichte*, i., 1833), which unfortunately broke off with a mere introduction; and (3) the little contribution of Dr. Hennen, to be mentioned in my next note.

<sup>1</sup> For the details of this episode, see the little pamphlet published by Dr. Gerhard Hennen, in 1887: *Ein Hexenprozess aus der Umgegend von Trier aus dem Jahre 1572*. There is every internal evidence that the case of Eva of Kenn was the first witch-trial in its region. The prime mover in the outrage I believe to have been Peter Omsdorf, notary of the ecclesiastical court at Trier, whose acquaintance we shall make later (see p. 29 below). It was he who, in the absence of both Amtmann and Schultheiss, took down Eva's first examination for witchcraft. The man implicated by her confession as to her child, sent a friend to prefer this charge against her: "darauff ist die Arme Person herauss genommen und daruber in gegenwurtigkeitt Meiers und zweyer Schöffen auch dess Ernhaftten Petri Omsdorff Notarien in meinem abwesen verhörrt worden." What power belonged to the notaries in these rural courts may be gathered from the words of a Trier jurist (Nicolaus Hontheim, *De arte Notariatus*, cited by Marx, *Geschichte d. Erztifts Trier*, ii., p. 86) of the beginning of the following century, who says that "da sei es denn vorgekommen, dass, wenn Angeklagte auf die Folter gebracht worden, die Richter im Wirthshause bei Tische gesessen hätten, während Der, welcher den Schreiber machen und das Protokoll führen sollte, die Fragen an den Angeklagten gestellt, die Folter gesteigert, mit Stacheln den Inquisiten gestochen, Streiche ihm versetzt, brennende Fackeln an ihn gehalten und den Scharfrichter gemacht habe." The record, in Omsdorf's own handwriting, is inserted at the end of a collection of the Scheffen-Weisheiten, or common-law maxims, of the villages within the jurisdiction of St. Maximin, made (doubtless in pursuance of the subordination of the abbey by the imperial decision of 1570) by the hand of Wilhelm von Biedborgh, court clerk at Trier. The volume containing it was, when I first used it (in 1885), still the property of a village wife at Fell; but it is now in the hands of an eminent professor (Dr. Reuss, of the theological seminary at Trier), to whose courtesy I owe the privilege of a re-examination. There is much in the trial of Eva of Kenn to mark it as the earliest in its series; and

Of this occurrence there is no reason to suppose that the city court, a dozen miles away, had any official cognizance; and it is interesting to note that in the new code for the government of the town the crime of witchcraft is not so much as mentioned.<sup>1</sup> The prime source of the epidemics of witch-persecution was, however, not forgotten: the torture was amply provided for.<sup>2</sup> And it was not long before a chance for its use presented itself.

Yet not under the administration of Archbishop Jacob III.; that prelate passed away in 1581. Again it was a colleague and associate of Dietrich Flade who succeeded to the See—Johann von Schönenburg, Provost of the Cathedral and, since the reorganization of the city, Governor of Trier. Of noble birth, like all his brother canons at Trier, and, like most of them, not yet in priestly orders, Johann VII. was yet in person and in bearing the very type of the parish priest. His piety is lauded by all his biographers; and no one who has studied for a moment his pinched face, as portrayed for us by the art of his contemporaries—the thin lips, the straight, sharp nose, the feeble beard straggling over lips and chin, the tense lines of cheek and brow, the soured expression—a face that bespeaks not more the sick man than the bigot—will doubt the truth of their verdict.<sup>3</sup>

that the persecution at this time went little, if any, further, is rendered probable by the fact that no other witches than these are mentioned in the extant confessions of the later witches of the region.

<sup>1</sup> Various other crimes are named. The code (*Reformatio senatus et ordinatio civitatis Trevirensis*, 1580) may be found in Hontheim, *Hist. Trev. Dipl.*, iii.

<sup>2</sup> *I. e.*, it was provided that torture should be used, according to the provisions of the imperial code of Charles V. It ought, in justice, to be added that, while the *Kursächsische Kriminalordnung* (1572) of Lutheran Saxony and the *Kurpfälzisches Landrecht* (1582) of the Calvinist Palatinate, with the lesser Protestant codes based upon them, went beyond the Carolina in making witchcraft, *even without material injury*, a capital crime when it involved dealings with the Devil, Catholic Trier, spite of clerical and Jesuit influences, was from first to last, as to witchcraft, content to abide by the Caroline code.

<sup>3</sup> These traits are especially noticeable in the portrait of him which hangs in the great hall of the Electoral palace at Coblenz; less so, in the face of the kneeling figure on his tomb in the cathedral at Trier, which, made after his death, I suspect to be much idealized. Somewhat more flattering, too, is a

Already past the meridian of life,<sup>1</sup> he was fast breaking beneath the painful diseases which were soon to make him a chronic invalid. His election to the Archbishopric he perhaps owed to his affection for that enthusiastic body of men which, at Trier as throughout Europe, in pulpit and confessional and professor's chair, had for twenty years past been turning the world upside down—the Jesuits. To them his predecessor had been devoted, and to them throughout his life Johann VII. turned, with a fondness chronicled alike by themselves and by their foes, and attested by a lavish generosity in strange contrast with the misery of his people.<sup>2</sup>

Who can wonder, then, that the first work of his reign was the rooting out of what was left of Protestantism at Trier? A few stubborn heretics were banished, the rest converted, at least nominally—their confessors could be trusted to complete the work. Then followed the banishment of the Jews from the whole Electorate. What remained but the extirpation of those subtlest servants of Satan—the witches?

In this third task another prelate was to have a more famous share than Johann himself. This was the Vice-Bishop (Weihbischof) of Trier, Peter Binsfeld. For long, since the Archbishop-Electors had become scarcely more than lay princes, the more purely ecclesiastical functions

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gold medal of him, "æt. 62," in the museum of Trier. More like the Coblenz painting in expression are the engraving in Khevenhiller, *Ad annales Ferdinandi*, and that upon the map of his electorate in Quad's *Fasciculus geographicus* (Cöln, 1608).

<sup>1</sup> As to the date of his birth, authorities differ, varying from 1525 to 1531. The inscription on his monument makes him seventy-four at his death in 1599.

<sup>2</sup> See Linden (in the *Gesta Trev.*) and Brouwer *passim*; also Reiffenberg, *Hist. Soc. Jesu ad Rhenum Infer.*, i: Say the Jesuit *Litteræ annuæ* of 1581: "Joannes Schonebergh Præpositus, nostræ Societatis amantissimus, in demortui locum suffectus est." Trier had long ceased to be the residence of the Electors; and, as Johann's health failed, he withdrew more and more even from Coblenz and dwelt with his clerical household in remote castles or abbeys, such as Grimburg and Prüm. It is a strange and notable fact that the private physician of Johann, from his accession to the physician's death in 1591, was Heinrich Weyer, a son of Dr. Johann Weyer, the first great assailant of the witch-persecution.

of their office and the general management of church affairs had fallen into the hands of the Vice-Bishop, whose dignity the Pope was wont to heighten by conferring on him a titular bishopric *in partibus infidelium*. Peter Binsfeld, Bishop of Azotus and Vice-Bishop of Trier, though born in the diocese,<sup>1</sup> had distinguished himself as a zealous pupil at the Jesuit college for his countrymen at Rome, where he had won the master's degree in theology, and had come back with a papal commendation to a position in the Elector's gift. Having won himself favor by the relentless vigor with which he purged from heresy and insubordination the historic abbey of Prüm, he was in 1580 raised to the vice-bishopric. Active, disputatious, pedantic, a master of the scholastic logic of the day, as well as of a facile Latin style, and, as became his Jesuit training, devoted to the mediæval dogmas of his church and to the order from which he had learned them, he became a pillar of the faith at Trier in every field of thought; and from his pen, in 1589, came that learned defence of the credibility of the witch-confessions which for a century played the part of a code to the witch-persecutors of Germany, Protestant as well as Catholic.<sup>2</sup>

<sup>1</sup> Two seemingly contradictory accounts are given of his origin: one, that he was born "ex spectata gente sub archidiocesi Treverica" (from the Luxemburg village of Bollendorf, say some); the other, that Abbot Johann VIII. of Himmerode, "Petrus Binsfeldium, observata latentis ingenii indola, a stabulo et domesticis Himmerodii servitiis ad Musarum castra traduxit." Both stories may be found in the *Metrop. Eccl. Trev.* of Brouwer and Masen (i., p. 69; ii., p. 131). Dr. Kraus (in the *Allg. deutsche Biog.*) follows the latter; but Hont-heim adopts the former, and Dr. Binsfeld, Gymnasial-Director at Coblenz, a descendant of the Bishop's brother, has told me that he has a genealogy of his family establishing the truth of this theory.

<sup>2</sup> His *Tractatus de confessionibus maleficorum et sagarum*, Trier, 1589, bearing on its title-page the significant motto: "Maleficos non patieris vivere." Revised and enlarged by the author, it was reprinted in 1591, with the addition of a commentary on the Roman law's chapter *De maleficis et mathematicis*. Again revised, the double work reappeared in 1596; and after the author's death it was reprinted in 1605, with his collected works in 1611, and finally in 1623. Twice it was translated into German—at Trier in 1590, and at Munich in 1591—not to mention sundry works which are scarcely more than paraphrases of it.



Yet there is no reason to believe that in the beginning of the witch-trials at Trier either the Archbishop or his suffragan had any part. The election of Johann von Schöenberg left his deputy, Dietrich Flade, for a time Acting Governor of the city. It was during his incumbency of this office as well as that of Judge that there took place what there is reason to believe the first trial for witchcraft at Trier.<sup>1</sup> Not from the side of Zell did the accusation come, but from Saarburg, a score of miles in the opposite direction. In the summer of 1582 the hue and cry was there under full headway.<sup>2</sup> Witches had already been burned, and on June 7th an "extract" from the confession of one of these was officially forwarded to the court at Trier, accompanied by a letter from the magistrate at Saarburg to the authorities of the city.<sup>3</sup> It was a charge of complicity against one Braun Greth (Margarethe Braun?<sup>4</sup>), a matron of Trier. After an interval of more than a month, devoted perhaps to the gathering of further evidence, Braun Greth was arrested and put on her trial. Under the torture the poor woman confessed to sad shortcomings, but persistently protested her innocence of witchcraft. Again and again fresh evidence warranted fresh torture, and the trial dragged on through three whole months. But when, on the sixth application of the torture, nothing worse could be wrung from her than that she was indeed a poor sinner and had sometimes eaten broth on a fast-day, her judges must have been satisfied. She had herself naïvely offered her tormentors to

<sup>1</sup> We read, it is true, in the Jesuit *Litteræ annuæ* of 1577, the significant sentence: "Nec veneficis ad supplicium productis opera defuit." But this may easily have been at Saarburg; for the activity of the fathers, as we shall have occasion to note, was by no means confined to the city.

<sup>2</sup> A Saarburg woman, named Falcken Greth, had been accused by Eva of Kenn in 1572. But the persecution may have crept down the Saar from Lorraine.

<sup>3</sup> The Saarburg magistrate, Dr. Quad von Landskron, was a man of birth and influence, later (1588-1600) Cathedral Provost and Chor-Bischof at Trier, where we shall meet him soon. He was a nephew of Archbishop Johann VI. and uterine brother of Lothar von Metternich, who was to succeed Johann VII. in 1599 (Brouwer and Masen, *Metrop. Eccl. Trev.*, i., 157).

<sup>4</sup> It is, of course, doubtful whether this ought to be taken as a surname.

go into exile and never again—German fortitude could no further go—to lie upon a feather-bed; and, as she does not reappear in later records, it is highly probable that her acquittal was followed by her banishment. Judge Flade had, as the law required, personally conducted her examinations; and, though there is little in the record to suggest conscientious scruples on his part, the stout denials of Braun Greth in the face of the most damning evidence may well have set him thinking.<sup>1</sup> Of no other witch-trial under his presidency have the minutes come down to us, and for more than three years we hear of no other case at Trier itself.

Meanwhile through all the country-side the superstition grew apace. There was enough to make the peasant think the weather bewitched. During the whole eighteen years of Johann's reign there were only two tolerable harvests. To add to the distress, troopers from the seething religious war in the neighboring Netherlands came ravaging over the border, the Spaniards not less than their Protestant foes. The lower Rhine was in the hands of the Dutch, who cut off the supplies which might have found their way up the river, and especially the fish so necessary to the long and frequent fasts of a Catholic land. Robbers, too, beset all the highways and only laughed at the feeble police of the prince whom they nicknamed "Johann the Sickly." Prayers and processions seemed of no avail. In vain did the

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<sup>1</sup> The exceedingly interesting minutes of the trial of Braun Greth—all, save the Saarburg extract, in the crabbed autograph of the court clerk, Wilhelm von Bitburg (or "Wilhelm von Biedborgh," as he always writes his own name)—are still preserved at Trier (in codex 1583 of the Stadt-Bibliothek). They break off at the close of her sixth examination, and are perhaps incomplete. There is nowhere in them intimation of earlier trials at Trier, and there is much to suggest the court's want of practice in such cases. We hear, in the proceedings against Braun Greth, of the trial and confession of a Margaret of Lenningen, who had certainly been at one time a woman of Trier; but, had she been tried at Trier, it is unintelligible that she was not confronted with Greth, whom she had accused. It is more likely that her case belonged to one of the rural jurisdictions, or perhaps to Lenningen itself, a Luxemburg village. That Greth's daughter, though also accused by the Saarburg witch, was not indicted, is clear from the minutes of her mother's trial; and there is no ground for supposing that the persecution went further at Trier.

Archbishop in the spring of 1585 display for three days at Trier to his despairing subjects the Holy Coat of Christ: the mice damaged the grain-fields, the rain nearly ruined the vintage, the Rhine was again blockaded. What wonder that men were bitter against those to whose malignity all this was thought to be due?<sup>1</sup>

And, whatever may have been the doubts as to witchcraft of the leading magistrate at Trier, he had now a colleague who was troubled by none. The vacant governorship had been filled by the appointment of the Freiherr Johann Zandt von Merl. Born of an ancient noble family of the Electorate, the new incumbent was hereditary bailiff of Zell, and held, beside his governorship, the position, half judicial, half administrative, of Amtmann of the two widely sundered jurisdictions of Pfälzel and Grimburg.<sup>2</sup>

It was into this remote district of Grimburg, lying on the farther slopes of the Hochwald, and adjoining the jurisdiction of Saarburch, that the witch-persecution seems next to have found its way.

"Often," write the Jesuits of Trier in their report for 1585,<sup>3</sup> "have our priests been summoned to the witches, whose

<sup>1</sup> The best account of the hardships of this time is that of Mechtel (in his *Chronicon Limburgense*, printed in Hontheim's *Prodromus*—the original is at Trier), a native of Pfälzel, who, though writing on the Lahn, had heart and pen for all that concerned his home. With him Linden and Brouwer fully concur.

<sup>2</sup> As "Johann Zandt von Merl, Erbvogt [zu Zell] im Hamme, churfürstlicher Stadthalter zu Trier, Rath und Amtmann zu Pfälzel und Grimburg," he appears in the official documents of the time. Such grouping of jurisdictions was common. 1584 was perhaps the year of his appointment to all three; for Mechtel (*Chron. Limburg.*, s. a. 1395) speaks of him as "anno Domini 1585. nobilis Joannes Zandt à Merl, satrapa in Palatiolo noviter constitutus," and Zandt himself said in 1591 to Nicolas Fiedler (I quote from the MS. of his trial) "Ir mir jetzt im achten jahr, dass ich im dienst der Statthaltereyen, vleissigh beigestandenn."

<sup>3</sup> These *Litteræ annuæ*, sent up yearly from each Jesuit college to the Provincial, were later (sometimes after an interval of several years) gathered up into volumes and printed for circulation in the order. Dealing mainly with the pastoral and missionary activity of the society and abounding in anecdote, they are full of interest for the history of the civilization of their time. It is from these that the great Jesuit advocate of witch-persecution, Delrio, largely



number here is very great, and have attended them even to the place of punishment; and through God's goodness it has been brought about that with great grief for their sins they have died piously even amid the torments of the flames." And they add an anecdote which not only suggests the whereabouts of their activity, but for him who will read between the lines has a more direct bearing upon our story. "Among these witches," goes on the report, "there was one who had beguiled by her arts a boy of eight, and was wont to take him to the place where at night they gave themselves up to their devilish doings, in order that while they danced together he might beat the drum; and he was often present when they were plotting witchcraft against others. This boy the Archbishop ordered to be brought to Trier, that he might be taught his catechism by us (for he was completely ignorant of Christian teaching, not even knowing the Lord's prayer). And while our priest was testing his mind in various ways, he noticed that the cord of the sacred waxen image of *Agnus Dei* which he had hung about the boy's neck had been twisted and tied with knots as if broken. Asking the reason, he learned that the Devil had visited the boy in the night, had scolded him sharply for letting himself be so easily won over, and had bid him fling away the thing hanging on his neck, unless he wished to be flogged. The frightened boy had done his bidding, and of a sudden had been snatched away to the walls of the city. There he

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drew the modern instances in which his book is so rich. Even in their printed form, however, the *Litteræ* are excessively rare; and they were never printed at all until 1581. But there is at Trier in manuscript (codex 1619 of the Stadtbibliothek) a precious collection of the originals for the Jesuit province of the Rhine: the *Annua Provinciale Rheni* for nearly all the years from 1573 to 1590. That they were the copies actually received by the Provincial at Mainz is clear from the fact that, from 1573 to 1583, they are signed in autograph by him or by his deputy. For those of the missing years (1575, 1578, 1579, 1581) I have sought in vain, not only at Trier, but at Mainz, Darmstadt, Würzburg, and elsewhere. A comparison of these manuscript *Litteræ* with the printed forms of such as were published shows great variation, but only in diction and style—clearly the work of an editor. It is from the manuscript *Litteræ*, therefore, as nearer than the printed ones to the events they record, that I translate the passages so important to the present study.

found a black goat, and, mounting it, was borne in briefest space to the wonted spot of the vile sport of the witches; and, when all was at length over, was brought back to the palace. Many things the boy revealed which the confessions of witches have since proved true. So the Governor of the city, in the name and by the authority of the Archbishop, asked that the boy might be taken into our school until he should be properly instructed in religion, so that afterward, living at the palace, but attending the sacraments with us, he might be safe from the wiles of demons; and this was done."

Now, the Governor of Trier who showed such solicitude for the boy's welfare was Johann Zandt von Merl, Amtmann of Grimburg; and when, three years later, this same magnate was asked if any of the witches at Grimburg had testified against Dietrich Flade, he remembered that a lad, Jeckell of Reinsfeld, who had been led astray by the witches, and who had been brought to Trier and given over to the Jesuit fathers, had been privately examined at the palace by himself and the Landhofmeister, and had confessed that, on his night-excursion from Trier to the witch-sabbath, he had seen there "certain from Trier."<sup>1</sup>

The year 1586 saw no decline of the persecution. In the spring of that year one witch at least was tried and condemned at Trier itself.<sup>2</sup> Pestilence followed famine, and

<sup>1</sup> Flade trial, p. 128. The identity of Jeckell of Reinsfeld with the boy of the Jesuit story would seem unquestionable, were it not for a startling passage in the *Littere* for 1587. There, following the tale of Matthias of Weisskirch (see pp. 21-24 below), we read: "*Alter juvenis simili Sathanæ fraude delusus ante triennium nostris traditus, solemni Ecclesiæ ritu fuerat liberatus; sed ad vomitum reversus, iterum ab errore resiliit, et paulo post miserandum in modum a sagis agitatus decessit.*" Had Johann Zandt, then, found it necessary to put his boy-accomplice out of existence? But, in 1588, he testified of Jeckell of Reinsfeld that "*der jungh ist noch im leben zu Reinssfeldt bei seinenn eltern.*" It is to be noted, however, that he was never produced, though the Elector himself (Flade trial, p. 34) requested that he be brought and confronted with Flade. The Landhofmeister here mentioned must have been that Anton Waldpot von Bassenheim who in 1589 was shot down by robbers. A decade later, at the accession of Archbishop Lothar, we find Johann Zandt himself filling that high post.

<sup>2</sup> One "*Barbell von Nittell weyssgerberss zu Trier, so gefangen,*" is accused in May, 1586, by a witch of Päschele, in the jurisdiction of Saarbùrg, and is

everywhere men demanded more summary vengeance on the servants of Satan. "In this year, and those next following," writes an eye-witness, the Jesuit Brouwer, "feminine duplicity mocked the public distress by witchcraft; and Satan himself trumped up here another Circe, as it were, to wreak cruel woes on mortals, to bewitch to death the cattle, to ruin the harvests, and to stir up tempests by her arts. And what carried the infamy of the horrible thing to the uttermost, was that both rich and poor, of every rank, age, and sex, sought a share in the accursed crime."<sup>1</sup>

evidently the same one described two months earlier, by one of an adjoining village, as "Die itzunder zu Trier gefangen ist, sey in weissgerberss." (St. Maximin witch-register: see note on page 20.) Flade himself, too, mentions "die hingerichtete Barbara," who had a daughter, a "weissgerberss," dwelling in the Neue-Gasse (Flade trial, p. 202). That she and only she is named by all three certainly suggests that her case was a solitary one; and from even these mere mentions it is evident that her trial was a more protracted one than those of the rural courts.

<sup>1</sup> Brouwer, *Annales Trevirenses*, lib. xxii. Christoph Brouwer (or Browerus, as he latinized his Dutch name), born in 1559, entered the Jesuit order at Cöln in 1580, and spent some years at Fulda, where he rose to the post of Rector, before he came to Trier to take up, at the suggestion of the Elector Johann, that history of the archdiocese which was to be the great work of his life. If, as his continuator and fellow-Jesuit Masen (Masenius) tells us, he had at his death in 1617 been at work upon it for thirty years, he must have arrived in Trier about 1587. In 1593 we find him Dean of the "Facultas Artium" of the university there. That Brouwer was a firm believer in witchcraft and in the persecution is clear enough from his pages. As, however, this closing portion of Brouwer's book was for many years suppressed by the Electoral censors, and when suffered to be printed, in 1670, had undergone the changes and additions of Masen, it might fairly be asked whether the important passages I have to cite from him on this subject may not have been inserted or amended by his editor. Brouwer's autograph of the original, at Trier, includes only the first eleven books, but a manuscript by another hand, which completes this down to 1599 (where Brouwer closed his work), shows these passages just as they were afterward printed; and there are at Bonn documents which leave no doubt as to their genuineness. There, in the University Library, is a thin folio containing what seems to be a part of a report of the censors. Its first two leaves are wanting, but its twenty-first page bears the caption: "*Index eorum quæ in Annalibus Trevirensibus Archiepiscopis, Prælatiis, Religiosis, Clero Diacesi minime laudabilia censentur ex libro decimo nono et reliquis necdum impressis.*" Now, among these "minime laudabilia" (which consist mainly of too free utterances regarding sundry dignitaries and religious communities of the province) are specified every one of the passages on witchcraft—

But the prestige of Dietrich Flade suffered as yet no abatement. He was already Dean of the juristic faculty at Trier, and in this year, 1586, he was elected to the Rectorship of the university—the only layman to hold that position in its whole history, from its reorganization in 1562 to its closure in the eighteenth century.<sup>1</sup> His wealth was proverbial. "By his civic zeal, and by his proved loyalty to his sovereigns," writes Brouwer, the Jesuit, "he had earned the judge's position in the city; learned both in public and in private law, greatly valued for his counsels, he had won favor, and fame as well, among the princes of the Empire, and had gathered to himself riches."<sup>2</sup>

Another autumn and still no harvest. A plague of caterpillars destroyed the vegetables in the gardens. The winter came early, and a long "cold snap" kept the mills from grinding. "God graciously turn away his wrath!" exclaims the chronicler. But the spring of 1587 crept in late and slowly. Men died of hunger. Much rain delayed the crops. The end of the world, said some, will come in 1588.<sup>3</sup>

Down the Saar and the Moselle into the jurisdictions just outside the city walls, down the peaceful valley of the Ruwer into the broad domain of St. Maximin, crept the persecution.<sup>4</sup> Would the Elector never take the matter more sternly in hand?

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the account of the persecution, of the attempt to bewitch the Elector, of the fate of Flade, of the recantation of Loos. That, spite of this censure, they were printed, we doubtless owe to the credulity of Masen; but he was not their author.

<sup>1</sup> As to Flade's Deanship, see Hontheim, ii., p. 545, and Neller's *Conatus exegeticus* (described below, p. 36, note). Of the Rectors two manuscript lists are preserved at Trier; and the whole line is printed by Hontheim at the end of his *Hist. Trev. Dipl.*, ii.

<sup>2</sup> Brouwer, *Ann. Trev.*, lib. xxii.

<sup>3</sup> Mechtel, as above.

<sup>4</sup> That we can trace this step by step, from village to village, we owe to one of the most remarkable relics of the witch persecution: the manuscript which I have called the St. Maximin witch-register. It is a careful record of all those accused of witchcraft by the witches tried in the jurisdiction of St. Maximin from 1587 to 1594, with the addition of all denunciations of St. Maximin witches by those on trial in neighboring jurisdictions (to which a lively interest in the affairs of the city led the compiler to include also all accusations of

Of a sudden—it was in 1587—it was whispered among the members of his household that an attempt had been made to bewitch the Elector himself. A boy present at the witch-sabbath when the plot was made, had confessed the deed, naming the very night when its execution had been attempted. The prelate had become vulnerable by carelessly leaving off at night a waxen *Agnus Dei* which he was wont to wear about his neck; and, though the attempt had not proved fatal, His Grace had declared that on awaking he had found himself so ill that for several days he was not free from the pain.<sup>1</sup> Such was the scant account permitted to the historian; but, fortunately for the story of Dietrich Flade, the Jesuit fathers at Trier thought a more detailed narrative of the occurrence due to their superior. "Through the cunning of the enemy of mankind," say they,<sup>2</sup> after

dwellers in Trier). It includes thus the depositions of 306 distinct prisoners (Müller, not noting that two are repeated, counted 308, which his printer made 368—a blunder borrowed by a host of later writers), of whom, however, only about 270 belong to St. Maximin itself. The number of denunciations is a little over six thousand; but, as most of the names recur again and again, the real number of the denounced is not more than a fourth or a fifth of that. The authorship of the volume has been ascribed to Claudius Musiel, because its last pages bear a superscription stating that they deal with the period when he was Amtmann of the jurisdiction; but, for reasons which I will not here detail, I believe its main author and user to have been Peter Omsdorf. That the book was actually in use as a source of accusations admits of easy proof. From it the testimony against Flade was to be largely drawn. The manuscript (a small quarto of some 600 pages) is now in the Stadt-Bibliothek at Trier. It is the main subject of Müller's *Kleiner Beitrag zur Geschichte des Hexenwesens* mentioned above (p. 9, note). Its earliest depositions are of 1586, and belong to Saarburg villages adjoining those of St. Maximin.

<sup>1</sup> So Brouwer tells the story (*Ann. Trev.*, lib. xxii.).

<sup>2</sup> *Littera annua* (MS.), 1587. It seems to me best to give here the original of this important passage: "Ejusdem hostis versutia et præstigiis deceptus rusticus, sed perspicacis ingenii Adolescens, annorum 15, ad locum ubi conventus suos habent sagæ, et nefarios choros, commensationes aliaque scelera perpetrant, aliquoties accesserat; nondum tamen Deo ac Deiparæ virgini (quod ritu illorum præscribitur) renuncians, diabolicis mysteriis erat initiatus: felis tamen cerebro in cibum sumpto, proprii cerebri (luna potissimum decrescente) magnam imbecillitatem contraxerat. Hanc tandem civitatem, quam prius viderat nunquam ingressus (quod non tam casu factum videtur, quam dæmonis astu, qui per hunc suos cultores in discrimen adductos volebat) a Præfecto captus in Principis Palatium adducitur, ut ibidem in abdito loco servatus, melius



speaking as usual of the great number of the detected witches, "was also misled a certain youth of fifteen years—a rustic, but keen of wit—who went several times to the places where the witches have their meetings and perpetrate their horrid dances, their feasts, and the rest of their crimes. He had not, indeed, yet renounced God and the virgin Mother of God (as is prescribed by their ritual), and been initiated into the diabolic mysteries; but, having taken a cat's brain at the feast, he contracted (especially as it was in the wane of the moon) a great imbecility of his own brain. He was at length arrested by the Governor and brought to this city, which he had before seen but had never entered (a thing seemingly due less to accident than to the artfulness of the Devil, who wished his followers to be through him brought into danger), and quartered in the Electoral palace, in order that, being kept in a secluded place, he might the

a nostris erudiretur, et malam illam servitutem effugeret: sed cum a sagis et dæmone noctu vexaretur, et crudeliter etiam verberaretur, cerea quoque sacrati agni effigies, quæ collo fuerat appensa, divelleretur, multisque minis ad propositum retinendum sollicitaretur; ad Collegium nostrum Reverendissimi Archiepiscopi jussu adductus, ne ibi quidem hac importuna divexatione fuit immunis, donec cubiculum in quo erat, exorcismis lustraretur, et benedictionibus ecclesiæ ab omni dæmonis infestatione vindicaretur. Post cum in templo nostro ritu Catholico exorcisatur, constanter oculos in vitream fenestram altari proximam defigebat: rogatus Ecquid videret? dissimulavit, quod postea fassus est, se suum dominum (singulis enim maleficis hujusmodi peculiaris præest dæmon quem dominum nuncupant) Sambuco pone fenestram illam insidentem vidisse, per fenestræ foramen sibi minitantem si a fœdere secum inito resiliret. Narrabat ille, dum a quæsitore (quod postea ipsi Reverendissimo fassus fuit) examinatur, inter eos, quos indicio suo prodebat, unum fuisse, qui in conventu gloriatus fuerat, se quadam nocte Archiepiscopo, cui in magni momenti officio minister erat, dormienti potionem ingessisse, aditu a Sua Cels. tunc patefacto, quod præter morem Agnum Dei, quem de collo gestat, in mensa cubitum concedens, deposuisset. Sed quia materiæ non satis erat, hac vice mortem evasurum. Nec falsa fuit vel dubia narratio. Experrectus namque Reverendissimus, licet rei ignarus, talem invaletudinem sensit; ut ad aliquot dies de vita periclitaretur, quousque Medicus salutari poculo venenum malum expulit. Hujus generis alia loquenti, cum non facile fides haberetur, conversus ad urbis præfectum, Quin et tuæ, inquit, vitæ bis insidiatæ sunt, sed quod tecum ferre soles vasculum cui duæ sunt imagines insculptæ, et nescio quid sacrati (Agnum Dei significabat) continet, et ad lectum tuum appendere consuevisti, hoc illis impedimento fuit, quo minus, quod studebant, perficere potuerint. Quæ signa vera esse Præfectus ipse affirmabat."

better be taught by our priests and escape his wretched bondage. But, when he was tormented at night by the witches and the Devil, and even cruelly beaten, and when the waxen figure of consecrated *Agnus Dei*, which had been hung about his neck, was torn off, and he was urged with many threats to go on with what he had begun, then by order of the Archbishop he was brought to our college. And not even there was he safe from this persistent annoyance, until the bedchamber in which he was had been purged by exorcisms, and freed from all molestation of the Devil by the benedictions of the Church. Later, when he was exorcised in our sanctuary according to the Catholic ritual, he kept his eyes constantly fixed on the window nearest the altar; and when asked, 'What are you looking at?' he concealed what afterward he confessed—that he saw his master Sambuco (for in this way is given charge of each witch a special demon whom the witches call master) sitting behind that window and threatening him through the window-slit if he should break the pact he had made with himself. When questioned by the examiner, the boy narrated (what afterward he confessed to the Archbishop himself) that, among those whom he was denouncing by his testimony, was one who had boasted at the witch-sabbath, that on a certain night he had administered to the sleeping Archbishop, in whose service he held an office of great importance, a deadly potion, His Grace being accessible, because contrary to his habit he had on going to bed laid on the table the amulet of sacred wax which he wore about his neck; but that, there being not enough of the drug, the Elector would this time escape death. Nor was the story false or doubtful; for the Archbishop, on awaking, although ignorant of the matter, felt himself so ill that for several days his life was in danger, until his physician expelled the dire poison by a health-giving draught. And, when, as the lad went on to tell other things of this sort, it was not easy to put faith in what he said, he turned to the Governor of the city: 'Nay, your life too,' he said, 'has been twice plotted against; but the little locket you wear, which has two engraved figures cut in

it, and holds something consecrated (he meant *Agnus Dei*), and which you have been wont to hang on your bed, was a hindrance to them, so that they could not carry out what they planned.' And the Governor himself admitted the truth of these statements."

The tale needs no commentary. To us it is full of another meaning than that it bore to the robust faith of the sixteenth century. Something less than magic can explain the boy's miraculous knowledge of the Elector's illness and of the Governor's private devotions. The official thus accused of witchcraft was Dietrich Flade. "Inasmuch," say the records of his trial, "as a young boy named Matthias, born at Weisskirch, led by others into witchcraft, was accused thereof by other executed persons, and was alleged also to have been present at the witch-sabbath, he was, by order of the Governor of Trier, brought to this city in custody; and, being examined, did at once, without torture, freely confess that he had through the seduction of the Devil several times been present at the sabbath,—that there he had seen a great number of richly-clad people, and among the rest two grandees in showy array. Now these, being described by him as to the clothing they then wore and their bodily figure, correspond entirely with Dr. Flade and another, both in their physical proportions and in all other details; and the aforesaid description was afterward confirmed by the fact that, when once the lad followed with others to see a criminal flogged out of the city, and Dr. Flade fell under his eyes, he at once recognized him, and afterward openly declared that he had seen the Meier<sup>2</sup> of Trier (meaning Dr. Flade, the Judge) at the witch-sabbath, and had met him at the expulsion of the criminal."

<sup>1</sup> Flade trial, pp. 155-157. Weisskirch, like Reinsfeld, was a village in the jurisdiction of Grimburg. My translation tries to follow the awkward syntax of the original. What stress the Elector himself laid upon this testimony may be seen in his letter to the theological faculty (pp. 36-38, below).

<sup>2</sup> The Meiers, or managers of the Electoral farms, the great men of the country villages, played a large part in the witch-persecution, both as accusers and as victims.



The plot that should cost Dietrich Flade his life was well begun. The all-powerful Jesuit fathers were convinced, the Elector himself terrified. All was now ripe for a formal denunciation which should catch the ear of the courts. This came from the other jurisdiction of Johann Zandt, from Pfalzel. In the summer of 1587 the persecution was there fully under way.<sup>1</sup> On the 8th of July was burned a witch, known as "Maria, the old Meieress," from the neighboring village of Ehrang. She had testified, and without torture, that Dr. Dietrich Flade, whom she knew well, had several times been at the witch-sabbath. And, though the Amtmann himself had thereupon examined the old Maria privately, and exhorted her to do nobody a wrong, she had remained firm as to Dr. Flade till her death. Nay, when brought before the open court for her sentence, and afterwards at the stake before all the crowd, she would have kept shouting out his name if they had not stopped her. To this all the rural assessors of the court later bore witness.<sup>2</sup>

The rest was easy. No witch, casting about in the torture for some name on which to fasten the accusation her inquisitors relentlessly demanded, was likely to forget that Maria of Ehrang had accused the well-known judge of Trier. The poor witches of the country-side, jealous of the greater exemption of their more prosperous city neighbors, had long insisted that there were town-folk too at the witch-sabbath but had hesitated to mention names. Here was a name for

<sup>1</sup> "In oppidulo prope Treveros Pfaltz dicto," say the Annals of Neuss for the year 1587, "archiepiscopus cremari jussit 118 sagas, duosque viros, eo quod confiterentur se suis incantationibus frigus ad Junium usque commovisse: et cum essent igni proximiores, fatebantur, si adhuc tres supervixissent dies ante suam captivitatem, acutius adeo commoturas fuisse frigus, ut ne viridis apparuisset uspiam ramus: ita ut et vineæ agerque et silvæ hoc anno steriles permanerent." (*Ann. Novesienses*, in Martene and Durand, *Ampl. Collectio*, iv., 521-739.)

<sup>2</sup> Flade trial, pp. 27, 28, 49, 116-118. Her life, of course, was already forfeit before this accusation was made. What was her reward for making it, it is not hard to guess: it lay in the power of Johann von Zandt, as Amtmann, to burn her alive or mercifully to suffer her first to be strangled. This it was, this and fear of a renewal of the torture, which kept many men and women "firm till death" in their confessions.

them, and a rich man's withal. A month had not passed before another on trial at Pfalzel—"Loch Hans," of Schweich—repeated the accusation of Maria of Ehrang.<sup>1</sup>

Johann Zandt was now ready for the next step. "Inasmuch," he said two years later to his colleagues at Trier, "as Dr. Dietrich Flade was a man of ability, learning, and experience, who had long been an Electoral Councillor, was Judge at Trier, and had been Acting Governor of the city, had done the Electorate great service and had discharged many commissions, had served princes and counts, men of noble birth and of ignoble," he would gladly have seen him clear himself of the charges thus growing rife against him. He had himself spoken to Dr. Flade's friends and acquaintances of the matter; but he noticed that none of them was willing to mention it to the accused. Therefore, out of the goodness of his heart, he resolved at last himself to tell Dr. Flade. It was in August of 1587. He invited the magistrate into his garden and told him of the charges made by Loch Hans. Flade thanked him, and asked that the man be more closely questioned.<sup>2</sup>

But the Judge was too old a lawyer to rest his case with that. It was "general-reckoning day" at Trier; and he immediately drew up a petition to the Elector setting forth his innocence, and begging to be allowed to clear himself legally before the Vice-Bishop, the Governor, the Official, or such commission as the Elector might appoint, and forwarded it by three of his fellow-jurists as they returned down the river. Nor did he stop with this. At the first opportunity he went himself to the Elector at Coblenz, and there, supported by a considerable number of his friends, defended himself in detail before the commission appointed to hear him.<sup>3</sup>

Meanwhile Loch Hans had clung to his accusation and been duly burned<sup>4</sup>; and the Governor had received instruc-

<sup>1</sup> Flade trial, pp. 118, 119.

<sup>2</sup> Flade trial, p. 62.

<sup>3</sup> Flade trial, pp. 41, 42, 45, 46. His message-bearers were "Johan Beyer der alt, Johan Beyer der jungh Doctor, unnd Gabriell Merll."

<sup>4</sup> From the *Krämer-Haus* at Trier Dr. Flade himself watched the Governor ride away toward Pfalzel to his execution. Flade trial, p. 119.

tions from court that, if there should be further testimony of the sort, Flade should be told the names of his accusers.<sup>1</sup> There was need of no long waiting. The rumor of his guilt was all abroad, and not only at Pfalzel but in the neighboring jurisdictions of St. Maximin and St. Paulin witches in abundance named him in their confessions; but it was not until the following spring that one was found who suited the purpose of the Governor.

In the meantime the foes of the unhappy magistrate were not idle. On October 3, 1587, the Elector addressed to his lay court at Trier an edict of censure well calculated to undermine the prestige of its president in the eyes of the world. "Forasmuch," said that document,<sup>2</sup> "as for some time past in the administration of justice all sorts of abuses have been noticed," His Grace had been investigating the matter and would presently issue a revised code of procedure for the court. The only complaint explicitly made was that of tardiness of justice; and for the remedy of this was prescribed greater promptness at the sessions, a less hesitating execution of the sentences of the ecclesiastical court, and a more energetic enforcement of the lay court's own decisions in civil matters. But far more serious were the suspicions implied by the further requirements that hereafter "all money, silverware, or the like, sequestered by the court, shall be deposited in the chest wherein the seal is kept, and duplicate keys of it given to the Judge and to two Assessors, no one of whom may open it alone,—that the Judge shall forthwith deposit in the chest all sequestered money now in his hands,—and that a special strong-room shall be prepared for the custody of all property held in pledge." And darker still is the insinuation, when at the end "His Electoral Grace herewith in all graciousness cautions the Judge and Assessors that they keep before their

<sup>1</sup> Flade trial, p. 63.

<sup>2</sup> A contemporary copy of it is in codex 1393 of the Stadt-Bibliothek at Trier. The volume of which it forms a part belonged to the "Churfürstlich Weltliches Hochgericht zu Trier," itself, and seems never to have fallen under Hontheim's eye. A part of the censure edict is printed by Wytenbach and Müller in the *additamenta* to their *Gesta Trev.*, iii.

eyes sacred Justice, and suffer themselves not, through gifts or any other of the means which sometimes sway a judge's mind and give rise to partiality, to be drawn aside therefrom." Was Dietrich Flade, then, so lately honored by all, a speculator and a corrupt judge? Or was this an attempt to blacken the fame of a man who must at all hazards be destroyed?

The Governor was at last ready with his witness. In April of 1588 Margarethe of Euren, on trial at Pfalzel, testified that Dr. Flade had come to the witch-sabbath in a golden wagon. There he had urged the destruction of all the crops, but the poor had opposed him and she herself had protested, whereupon he had struck her with a stick, saying that they of Trier had enough yet; and when in despair she had uttered the name of God, the whole assembly had instantaneously vanished. He and his followers had once brought on a terrible hail-storm, which had killed forty-six cows at Pfalzel, by standing in the Biewer brook and pouring water over their heads in the name of a thousand devils; and he had wished to overturn both the Pfalzel and the Euren woods, so that no more stakes could be made for the burning of witches. He had also created the snails which had injured the crops—how, he could himself tell if asked. He had helped dig up from the churchyard at Euren a four weeks' child, whose heart had been taken out, baked in a fritter, and shared among the witches, in order to make it impossible for them to confess their witchcraft. She herself was indeed confessing; but she had eaten only a little. All this and more with the most gratifying exactitude.<sup>1</sup>

Again the Judge was summoned to an interview in the Governor's garden. He was permitted to send three friends—his kinsman, the Dean at Pfalzel (Peter Homphaeus), his confessor (and hers), the Jesuit Lucas Ellentz, and his colleague, the Assessor Maximin Pergener—to examine the witch in his behalf. But, in spite of their efforts, she was firm to her death. One of them reported to Flade that "it seemed as if the Devil spoke out of her."<sup>2</sup>

<sup>1</sup> Flade trial, pp. 123-127.

<sup>2</sup> Flade trial, pp. 44, 45, 63.

Such was the evidence, born of the torture, on which in the witchcraft days men and women were done to death. In the following month another Pfälzel witch confirmed the testimony about the snails.<sup>1</sup> The case of Flade was desperate indeed.

The old man's misfortunes had not come single. Death had stripped him of family and friends: his wife, his brother, his influential brother-in-law, his sister, his son, all were gone.<sup>2</sup> Among those still bound to him, however, was one colleague of some weight—Christoph Fath, a protégé of his brother Franz at Speyer, who, through the good offices of Dietrich Flade himself, had become an Assessor of his own court at Trier, and had received in marriage one of his kinswomen. Shrewd but cruel was it when to Christoph Fath, on July 4, 1588, was sent the commission to investigate and report the evidence of witchcraft against Dr. Flade. If it were an instinct of fairness that suggested the choice, it was certainly none that, on an enclosed slip, named as his associate in the investigation the terrible notary, Peter Omsdorf.<sup>3</sup> The dis-

<sup>1</sup> Flade trial, p. 152.

<sup>2</sup> Flade trial, pp. 38, 78, 190. His household seems at this time to have consisted, beside himself, of only his three wards, Johann, Franz, and Maria Homphaeus, probably the orphans of his brother-in-law Christoph.

<sup>3</sup> Flade trial, p. 85. If what has been already told of Omsdorf does not justify this epithet, let me add but one bit of testimony. After his death Scho Apollonia, of Kirsch, one of the few witches who escaped his clutches, testified, among other things, that, as she was hanging in the torture at Zell, she saw Meyer Huprecht, of Schweich (one of the accusers of Clasen Adam, Schultheiss at Schweich, and of his wife Apollonia), slip a piece of gold into Omsdorf's hand; that Omsdorf questioned her as to various people by *name*, including some at Trier, asking her whether she had seen them too at the witch-sabbath ("Er Omsdorff hab nitt allein Roders Adamen, sonder auch andere mehr anderstwo, auch binnen Trier, namhaft gemacht, und sie gefragt, Ob sie dieselbige auch auff Hetzerather Heyden ahn iren dantz gesehen?"); and that, angered, he had himself seized the executioner's staff and prodded her with it in the breast, so that the blood flowed. (See the fragments of the case of Clasen Adam and his wife, in codex 1534 of the Trier Stadt-Bibliothek.) Besides being notary of the ecclesiastical court at Trier, Omsdorf was the regular notary at the court of St. Maximin, and we shall meet him officiating in that capacity also at Pfälzel and at St. Matthias. Most of the evidence against Flade had thus been taken down, if not inspired by him; and we find him constantly active in the later persecution. He was still busy at it



mayed Assessor at once returned a long and humble petition to be excused from the ungrateful task, pleading his intimate relations with the family, his great and repeated obligations to the accused, their kinship, and adding that within the last few weeks Dietrich Flade had stood godfather to his child. But the Elector sent an immediate and peremptory refusal; and poor Fath could only insist on filing his letter of protest among the papers of the case and enter upon his duties.<sup>1</sup>

A month later, on the 21st of August, the report of Fath and Omsdorf was ready. It comprised extracts from the confessions of no less than fourteen witches, from a half-dozen different jurisdictions.<sup>2</sup> Of their general character that of Margarethe of Euren is a sufficient specimen. As a stout but stately man, his black beard streaked with gray, clad in his long black mantle, with the golden chain of his rank about his neck, and mounted perhaps on a fiery horse, as they had seen him many a time on high occasions in the streets of Trier, so now they claimed to have seen him at the witch-sabbath—there as elsewhere, with his deep, clear voice, the leader of the whole. Those of the remoter jurisdictions, however, did not mention Flade by name, but spoke only of lordly folk who seemed to come from Trier. As to the witches of Trier itself, the Governor "could not remember that Dr. Flade had been accused by any person; for," he added, "the Judge himself was present in person at all the examinations and executions." And, even as to Grimbürg, he said that "some had indeed been executed there, but none had accused Dr. Flade, for the region was

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in July of 1597, but was dead in May of 1600. He must have died in tolerably good repute; for the charges of Scho Apollonia are objected to as blackening the memory of a minister of justice. As to the part taken by notaries in the persecution, see the striking sentences of Linden (page 55) and the words of Hontheim (p. 10, note).

<sup>1</sup> Flade trial, pp. 82-93. A separate letter to Omsdorf instructed him also as to his duties.

<sup>2</sup> Flade trial, pp. 93-146. These jurisdictions were Pfälzel, St. Maximin, St. Paulin, St. Matthias, and Esch, besides those where inquiry was made in vain; but the witches of Esch, like those of Grimbürg and Saarburg, do not name Flade.

remote from the city."<sup>1</sup> From Pfalzel, however, he had much to contribute; and, having himself received from the Elector a letter of the same date as those to Fath and Omsdorf, the needed depositions had been already sought out—for it did not become him, as he deprecatingly remarked to Fath, to oppose the Elector's instructions.

The only questionable evidence was that of the witch Kirsten Barbara at St. Matthias. Peter Omsdorf had himself, as notary, taken down her confession against Dr. Flade; but the magistrate, Dr. Dietrich Balen, asserted that in the notary's absence she had retracted her accusation, and it became necessary to take the testimony of the assessors and the court-messenger as to her words. The messenger swore that she had indeed wished to retract her confession, and that he had sent word of this to Dr. Flade, who in reply had told him not to trouble himself about the matter, but to bear himself as a messenger should. The kind-hearted fellow had also asked the witch why, by retracting her confession, she caused herself again to be tortured; to which she had bravely made answer, that "it were better she should suffer a little than that she should do others a wrong." But the poor woman had overrated her strength, and all agreed that she had reaffirmed her accusations. The Governor had given the Commission the additional information that when, on the morning of Barbara's execution he had himself ridden out from the city to receive the criminal according to custom, he had met Dr. Flade just outside the New Gate. It being still early they had chatted together, though of other matters, until the witch appeared; and, when he at last rode to meet her, Dr. Flade had followed. Knowing that the magistrate's friends had informed him of the woman's accusation, the Governor and others supposed that he meant to confront her; but instead Dr. Flade had flung his mantle over his shoulder and had hidden himself in the crowd.

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<sup>1</sup> He mentioned, indeed, the testimony of Jeckell of Reinsfeld (see page 18, above). Of Matthias of Weisskirch not a word was yet said. It is to be suspected that the Elector himself had enjoined strict silence as to the alleged plot against his own person.

It was, in sooth, far too late to hope aught from the silencing of a single witness. The report of the Commission had hardly reached the Elector before there came to him tidings of two fresh accusations against Flade; and a letter of September 4th instructed Fath to renew his investigation.<sup>1</sup> Three days later the Elector had found time to dip into the report, and was so much interested that he wrote the Commissioner to send him the entire confessions in place of these extracts; but the dismay of the local magistrates at this proposal to submit their chaotic protocols to the eyes of the sovereign found utterance in such a torrent of arguments that it was suffered to drop.<sup>2</sup> Meanwhile the evidence against Flade multiplied day by day; and when, at the end of September, Fath handed in his supplementary report, it included six new depositions.<sup>3</sup>

A day or two later came an incident which, under the legal maxims of that day, was even more damning evidence of Dietrich Flade's guilt—his attempt at flight. It was on Monday, the 3d of October, 1588, that the imperilled old man found an opportunity for this last desperate experi-

<sup>1</sup> Flade trial, pp. 161, 162.

<sup>2</sup> Flade trial, pp. 173-177.

<sup>3</sup> Flade trial, pp. 163-173. They are all from Pfalzel and St. Maximin. It is already clear, however, that the Elector had knowledge of the case from other sources than his Commissioner; and with the reports of the Commission he later, by accident or design, submitted to the court charged with Flade's trial three other bodies of accusation, which have found a permanent place in the records of the case (Flade trial, pp. 147-159). What seem to me the originals of these, in three distinct handwritings, all differing from Fath's, are among the Clotten fragments at Trier (see note, page 5 above). The first of them, perhaps from Johann Zandt, contains only the testimony of the next Pfalzel witch who accused Flade after Fath's first report. The second, very possibly the work of Omsdorf, anticipates in its contents the whole of Fath's second report—and more; for it includes the later confessions of two witches burned in October. Nay, more still: it adds the story of Matthias of Weisskirch (p. 24, above), which only thus makes its way into the records. And, not content even with this, the anonymous reporter goes on to tell the story of Flade's flight, of which we have next to speak. The third of these transmitted papers is a certified extract, dated 7 December, 1588, from the confession of a single Saarburg witch. It is to this alone that can properly apply the Elector's sentence of enclosure which follows it in the record: "Diese Urgichten seint unss an stundt, von unserm Amptman zu Sarburgh einkommenn." Was the plural intentionally misleading?



ment.<sup>1</sup> Johann von Eltz, Commander of the Teutonic Order at Trier,<sup>2</sup> was that day to set out on a journey to the commandery at Beckingen on the Saar, and thence to the assizes at Bolchen in Lorraine; and he had consented that Dr. Flade should be his passenger. He too, he told the Commander, had errands in that direction—debts to collect, foreign money to exchange; and, furthermore, he wished to escort his young nephew, Johann Homphaeus, to the university at Pont-à-Mousson.<sup>3</sup> Accordingly, when, that morning, Johann von Eltz with his coach reached the suburb of Heiligkreuz, he found there awaiting him, as by appointment, Dr. Flade and his nephew. As he took them in, Dr. Flade's maid appeared, bearing on her back a vintage-basket heavily laden with money; and this too was stowed in the coach. The fugitive reached Beckingen in safety, but the Commander was there overtaken by a message from Trier taunting him with helping a witch out of the country.<sup>4</sup> Such a reproach no man could bear; and, unconvinced by the old man's pleas, he brought him back as he had taken

<sup>1</sup> Of this episode we have four accounts: (1) the anonymous one described in the last note; (2) the letter of the Burgomasters to the Governor, mentioned on page 34; (3) Flade's letter to the Elector, as to which see page 35; and (4) that given by Governor Zandt to the court at the meeting described on page 40.

<sup>2</sup> "Landcommenthur der Ballei Lothringen, Commenthur zu Trier und Beckingen," was his full title.

<sup>3</sup> This Lotharingian school, much sought by the youth of Trier, was then at the height of its fame. It was just at this time that there went forth from it those three young monks whose zeal was to work such a sweeping reformation in the oldest religious orders of the west. Pont-à-Mousson was seventy or eighty miles above Trier, on the Moselle, midway between Metz and Nancy. Beckingen, just at the Lotharingian frontier, was some twenty-five miles from Treves; and Bolchen, or Boulay, lay on the uplands, half-way from the Saar to Metz.

<sup>4</sup> That so high an official as the Landcommenthur could have been ignorant of what had been now for some time town talk is hard to believe, and the rendezvous at Heiligkreuz certainly points at collusion. It is more likely that his sympathy or his courage failed him. Who sent the message after him we can only guess, but it may well have been Johann Zandt, who, at Grimburg, was (though not on the direct road) far on the way from Trier to Beckingen. It is to be noted that his account, alone of the four, knows that the message was a letter. According to Flade's own account it would seem that he stopped at Beckingen of his own accord, and that it was only on the return of Eltz from Bolchen that the latter insisted on taking him back to Trier.

him away—nephew, money, and all—and set him down at the city gate. He had been gone just a week. Back to his house, lugging his gold himself, with the aid of the gate-keeper and his family, crept the old magistrate; and it was well for him that a chance laborer could let him through the back gate by breaking it open with a hatchet.<sup>1</sup>

For the flight of Dr. Flade had caused great excitement in Trier. The Governor happened to be at Grimburg, but the two Burgomasters, Nicolas Fiedler and Johann von Kesten, wrote him on the day after the fugitive's return a full account of the affair. They had, they assured him, warned the gate-keepers not again to let him out of the city; and none too soon, for that very morning he had made diligent inquiry at the gate, through the husband of a former servant, as to whether his exit was forbidden.<sup>2</sup>

Johann Zandt hastened back to the city, conferred with the Burgomasters, and summoned Flade to appear before them at the town-hall. Fearing arrest, however, or wishing to gain time, he sent his little nephew, Franz Homphaeus, to learn their errand; and, although the boy was assured that his uncle might come without risk, he did not appear. The gatekeepers were thereupon officially cautioned; and to good purpose, for that very afternoon Dr. Flade made an attempt to issue from the east gate of the town.<sup>3</sup> But the

<sup>1</sup> Flade's house was in the street which still takes its name from the old crane on the quay at its end; but the Krahnen-Strasse then included the whole stretch from the Brücken-Strasse to the river. The house I have not been able to identify.

<sup>2</sup> Flade trial, pp. 69-74. Both Fiedler and Kesten went themselves to the stake for witchcraft in 1591—the victims, as I believe, of that Johann Zandt to whom they addressed this letter. Both, like Flade, were men of wealth; and for their trials, too, it was Omsdorf who collected the evidence. The records of Fiedler's trial are still extant at Trier, and were printed, with notes, by Wyttenbach, in the *Trierische Chronik* for 1825. Kesten had been an Assessor of Flade's court at Trier since 1576 (his letter of February 6th of that year thanking the Elector for his appointment is in the Stadt-Bibliothek at Trier), and Fiedler also was one of the oldest members of that court.

<sup>3</sup> "Zu Mosell pforten." That this means the Muss-Pfortē (Porta Musilis) is clear from the context; but, for proof that this oddly misleading name was usual, see an article by Müller in the *Trierische Chronik* for November, 1818.

unhappy man was now an object of curiosity to the rabble of the streets. A noisy mob, largely of students, gathered at his heels; and when he was turned back from the gate the crowd grew so boisterous in its abuse that he was forced to take refuge in the near Cathedral, whence he escaped through a passage into the adjoining Church of Our Lady, and thence by way of the cloister into the house of one of the capitulars. Here he had to stay until evening, when, at the instance of the Cathedral Provost and Dean, the Governor granted him an escort home through the streets.<sup>1</sup>

For the present he was suffered to remain here; but townsmen were deputed by the Governor to watch him, night and day, until certain of his friends gave bail for him, and he himself made oath, on pain of forfeit of all his property, not to leave the town. But his bondsmen soon grew tired or ashamed of their burden: on the 30th of December the Elector released them, and he was again watched, at his own cost, by four citizens, two each from Trier and from Pfalzel.<sup>2</sup>

Such was the state of affairs when, on the 5th of January, 1589, Dr. Flade made his last despairing appeal to the Elector. Vehemently protesting his innocence before God, he begs "out of a deeply troubled heart and a sorrowful mind" that he be at last permitted to purge himself of the shameful charges against him. The scandal and ignominy are more than he can bear. He denies that he has sought to leave the country without the Elector's permission, though he admits that certain of his friends had hoped to gain this for him at the approaching Landtag. He appeals to his

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<sup>1</sup> Flade trial, pp. 64, 65. Dr. Flade's own explanation of the affair, in his letter to the Elector, was that his nephew had misunderstood or misquoted the answer of the city magnates, and that he had then sought, not to leave the city, but to go for advice to the Cathedral Provost, having no longer kin of his own blood at Trier to advise him; that, the Provost being in chapter-meeting, he had been forced to wait until too late to appear before the Governor and Burgomasters; and that he had then resolved, in order to escape the insults of the rabble, to take up his abode for a time at the abbey of St. Matthias, and so had sought exit at the city gate. (Flade trial, pp. 78-80.)

<sup>2</sup> Flade trial, pp. 3, 4, 65, 66, 80.

own long and loyal service and to the high standing of his kin by marriage. If there may not be granted him "security against the fury of the populace" until he can establish his innocence, he asks at least permission to retire from the world for the rest of his life into a religious order somewhere away from Trier.<sup>1</sup>

But the Elector had far other plans. On the 14th of January, 1589, he laid Flade's letter, with a copy of the evidence against him, before the theological faculty at Trier. Accompanying it was a most suggestive appeal for their advice.<sup>2</sup> "It has doubtless long ago come to your knowledge," he writes, "into what general suspicion of witchcraft our Judge at Trier, Dr. Dietrich Flade, has fallen, and what has since taken place as to his flight. Now, although at first, when he was accused by only one or two of the persons executed for witchcraft, we thought the matter hardly worthy of notice, and therefore for a while, on account of his rank, let the matter drift; yet afterward the scandal grew ever greater, and the accusations of the witches, both old and young, men and women, became so frequent that we were led to have the trials, in so far as they related to him, excerpted, and find that twenty-three executed men and women have confessed against him, and persisted firmly in the assertion to their end that he was with and among them at their witch-sabbaths, took the lead in evil suggestions, and helped personally to carry them out. And these confessions come not from one court alone, but from many different ones—from Trier, Maximin, Paulin, Euren, Esch, St. Matthias, Pfalzel, Saarburg, and elsewhere; and the sus-

<sup>1</sup> Flade trial, pp. 75-81.

<sup>2</sup> The preservation of this document we owe to one Embden, a student at Trier of the eminent jurist, Neller, who, in 1779, doubtless inspired by his master, resurrected it (probably from the university archives) and printed it with a commentary in his *Conatus exegeticus* (Trier, 1779), a disputation under Neller's presidency. It is to be noted that Embden, and probably therefore Neller also, still believes in the reality of witchcraft, and even of the witch-sabbath. The Elector's communication was addressed to the Rector (then Helias Heymans, Dean of St. Simeon) and "gantzen facultet Theologorum unserer universiteten in unserer Statt Trier." It is reprinted by Conrad in his *Trierische Geschichte* (Hadamar, 1821).

picion is increased by the fact that others accused by these same persons have been found guilty and have confessed—among them some of considerable respectability, except that partly through avarice, partly through unchastity and other devilish impulses, they have fallen into this wretchedness. All this you will learn from the enclosed *Extract*, and especially what a young boy who was misled into such witch-doings confessed freely and without constraint against him, Flade, though he had never before known him, with description of his person, rank, and appearance, and how, seeing him by chance at an execution, he immediately, without anybody's suggestion, pointed him out and said that he was the one who had been always at the witch-sabbaths. Well known to you, moreover, is what afterwards occurred in connection with his second attempt at flight. And we send you also herewith the petition the said Dr. Flade wrote us, wherein at the end he almost betrays himself, desiring us to allow him to enter the monastic life, and offering us the disposition of his property<sup>1</sup>; a thing which surely, if he were not conscious of guilt, was not likely to be done by him, a man notoriously avaricious and, as shown by an investigation heretofore made, of such character that by reason of his avarice justice was almost ill-administered, so that we perhaps already had cause enough to dismiss him from his office. When we bethink us, however, of the position of honor he has so long held, and remember too that among scholars there are current all sorts of objections as to the confessions that this one or that has been seen at the witch-sabbath, we have wished, for the sake of further information, and especially because witchcraft is counted among the ecclesiastical crimes, and it has heretofore been customary for such cases to be first submitted to ecclesiastical judges, and then after their finding to be remitted to the

<sup>1</sup> This seems to me a misunderstanding of Flade's letter. What he offered was the disposition of himself. He asked "ihnn gaistlichen standt . . . mich zubegeben, jhe doch meine Disposition in E. Churf. gnaden gnadigste anordtnungh underthienigst heimstellendt." His property he nowhere speaks of. The other misconceptions and misstatements of the Elector's rescript need no pointing out.



lay judge,<sup>1</sup> not to omit to consult in this matter the theological faculty as well as the jurists, so that nobody, whether of high or of low degree, may have right to complain, and that in the administration of justice we may fall into no error. Therefore it is our gracious will," concludes the Elector, "that you of the theological faculty come together privately and consider this matter as its importance demands, and immediately let us know in writing how you find it, according to the canon law and the unanimous opinion of the theologians, that we may take such further steps as it behooves, and that Justice may be left to her course without respect of persons."

But, despite the evident ill-will of this letter, the theologians of Trier seem to have been as obdurate as the scholars and jurists of the Elector's court. At least, no finding of theirs was transmitted to the tribunal now charged with the final step. On March 23d instructions were issued to Johann Zandt von Merl for the arrest of Dr. Flade and his confinement in the town-hall; but it was not till a month later, on April 22d, that the Governor thought it wise to convene the court and put the writ in execution. Even then, as we are told by the clerk, "the Acting Judge [Dr. Heinrich Hultzbach, of Saarburg, Flade's deputy and eventual successor] and the Assessors had sympathy with Dr. Flade and declared that they would rather have been relieved of this thing than charged with it"; but the arrest was carried out, although the old man had a disabled thigh and had to be borne to his prison in a chair. On May 10th<sup>2</sup> he was transported to the Electoral palace, there to confront two priests, convicted of witchcraft, who had confessed against him. The priests repeated their accusation to his face; "whereupon Dr. Flade answered, 'It can and may

<sup>1</sup> A very significant statement, of which I have found no confirmation in the extant records at Trier.

<sup>2</sup> Flade trial, pp. 1-6. He was imprisoned in the "great hall" ("so der Burgergefenghnuss ist") of the Rathhaus, and a special keeper assigned him, who should permit him no communication with the outside world. In the meantime an inventory was made of the contents of his house, and his papers and valuables taken into custody (pp. 6, 7).



be that you saw my figure, but my person surely not,' and he cited certain examples, and argued that these were pure *obfascinationes* and delusions of the Devil."<sup>1</sup> He was now borne back to his prison and left to himself again, while the Elector drew up, and on June 9th transmitted, careful instructions and a list of questions, based on the absurd allegations of the witches, for his examination.<sup>2</sup>

On the 11th of July Flade was examined upon these questions, and answered with much spirit. He denied all complicity in, or knowledge of, the doings of the witches, again insisting that, if he were seen by them, it was through some delusion of the Devil's, and citing the phenomena of dreams in support of his theory; but at the end he begged a day or two's time to bethink himself further, and asked that his confessor might be suffered to visit him. These requests were granted, and his replies forwarded to the Elector.<sup>3</sup>

That prelate was unmoved. On the 29th he sent to the Governor his final decision. The matter was now, he declared, noised abroad through the whole Empire and outside it, and it behooved the authorities to see that sacred justice take its course. Accordingly he transmitted the testimony against Flade, with all other documents in his hands pertaining to the case, and instructed the court over which Dr. Flade had so long presided to proceed against him.

In the meantime the Acting Judge and most of the Assessors had deserted the city. Their ostensible and sufficient excuse was the pestilential midsummer air of the town; but it is to be noted that not more than two had been present at any of the earlier proceedings against Flade, and that the letters written by order of the Governor to summon them back make no mention of the trial of Flade among the items of business demanding their attention.

<sup>1</sup> Flade trial, pp. 8-12.

<sup>2</sup> Flade trial, pp. 12-34. He had, he said, in his letter of transmission, consulted impartial jurists, who advised him to delay yet a little the formal indictment until further "inquisition" could be made.

<sup>3</sup> Flade trial, pp. 34-55.

<sup>4</sup> Flade trial, p. 78.

They came, however, at the summons<sup>1</sup>; and on August 5th the Governor detailed to them the whole history of the case, laying before them the evidence and the Elector's instructions. They asked time for consideration, and two or three days later sent in a unanimous request to be excused from the duty, pleading their long and kindly relations with the accused, and protesting that they had no official knowledge that he was not still their head. But the Elector returned a prompt refusal, declaring that Flade had long been relieved of his office; and the Governor assured them there was no use putting the matter off—"the apple must be bitten."<sup>2</sup>

On August 17, 1589, therefore, the formal trial of Flade was at last begun. Into all its sickening details we need not go: it differed little from other witch-trials, save in its greater caution and in the trained subtlety of the victim. When he found confession inevitable, he at first tried to escape the torture by admitting other intercourse with the Devil, while still denying all witchcraft proper. But this was as idle as were his personal appeals to his judges. By civil as by canon law witchcraft was an "excepted crime"; and not his rank, not his age, not his academic title, not the infirmities of his body,<sup>3</sup> could save the proud old man from the ignominy of the executioner's touch, or set a limit to his torment till he had confessed all that his own imagination or that of his inquisitors could suggest.<sup>4</sup>

<sup>1</sup> Except Maximin Pergener, who could plead the death of his wife. The others were, in the orthography of the record, Christopf Enschrigen, Niclas Fiedler, Claudius Musiell, Hans Kesten, Bernhard Schroder von Piesport, Christopf Fath, Wilhelm Kilburgh, Carl Wolff, Johann Tholess von Ediger, and Hans Philipp Boitzheim. All, according to the rules of the court, were jurists (*Rechtsgelehrten*).

<sup>2</sup> Flade trial, pp. 55-69, 178-184, 187-189.

<sup>3</sup> He had a hernia, which caused him especial suffering in the torture.

<sup>4</sup> The form of torture usual at Trier, as generally throughout Germany, was that known as the "strappado"—in German, "die Schnur," the cord. The prisoner's hands, bound behind his back, were made fast to a rope drawn over a pulley at the ceiling, and so lifted till his whole body was wrenched from the floor into the air, where he was left hanging, sometimes with weights attached to his feet, or with the screw applied to his toes, to intensify the torment. It need hardly be said that it often left men and women crippled for life.

It took, indeed, much pain and more than a single session to bring the stubborn old man to terms; but the executioner had learned his trade now, and it had long been noticed that no witch escaped. Soon or late, in sanity or in delirium, the agony always did its work. Dietrich Flade knew well what a witch-confession was expected to be, and little by little they wrung from him the grotesque nonsense they sought. He knew, too, that, whatever else might be omitted, one thing could never be—the names of accomplices. It was of no use to allege that the witches were masked or to name only those already executed: such tricks were long worn out. A happier thought was it—as is proven by the history of more than one witch-persecution—when he began accusing his judges; and at least those absent from the torture-chamber were duly named in the record. But no court would be content with these alone; nor yet when, with a still truer instinct, he denounced the great of the land.<sup>1</sup>

Once it seemed as though his tormentors were satisfied; but the Elector returned the prisoner's answers, declaring that thus far they were mere child's play, and the whole procedure had to be begun over again.<sup>2</sup> Piteous was it when even the imagination of the old Judge could no further go, and, complaining of the failure of his memory, he was forced to beg that the testimony against him be repeated to him as a reminder—which was done.<sup>3</sup>

At last, in mid-September, his confession was complete. Not a word had yet been said, in all the trial, of that alleged bewitchment of the Elector which, all unknown to Flade, had lain at the beginning of his troubles. But when the court came together on Saturday, September 16th, to frame its sentence, and had summoned the prisoner before it to

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<sup>1</sup> As "Her Philips, Her zu Wynnenburgh, der junger," Karl von "Kesselstat, Amptman im Hamme," and Philipp "Waldeck[er von Kaimpt], der Rotmeister." The Burgomaster Hans Kesten he implicates with evident relish. But the whole number of those accused by him was not large.

<sup>2</sup> Flade trial, pp. 204, 205. "Dasselb wass er noch zur zeit von sich gethan fast schertzliche dingh waren."

<sup>3</sup> Flade trial, p. 218.

announce to him that the following Monday would be the last day of his life, Johann Zandt von Merl turned to him and bade him relate to the court what he had already privately confessed to himself as to this attempt on the Elector's life.<sup>1</sup> The name of the great dignitary whom he now made his accomplice in that impossible crime has since been diligently blurred from the record; but with a little pains it may still be deciphered,<sup>2</sup>—nor is it difficult to guess by whom it was suggested.

On the morrow he witnessed the mass and received the sacrament at the hands of Father Ellentz and another Jesuit.<sup>3</sup> Early on Monday he made some minor dispositions as to his property and confronted without flinching two of those whom he had accused.<sup>4</sup> His confession was then read to him, and, having assented to it, he was led out before the open court to hear his sentence. Once more Governor Zandt reviewed the history of his case, and then in the name of public justice solemnly arraigned him as a witch. His confession was read to the court, in the hearing of the

<sup>1</sup> Flade trial, pp. 224–228.

<sup>2</sup> The “Her Dhumbdechant [Domdechant] von der Leyen,” with whom as accomplices are named “Pauluss uff Grymburgh” and “Michael Neuwmetzler.” The plot is said to have arisen “dess streits halben, so zwischent dennen von Wynnburgh unnd von der Leyen hiebevorn der Dhumbprobsteien halben entstanden.” I am puzzled by the fact that, according to Brouwer and Masen (*Metrop. Eccl. Trev.*, ed. Stramberg, i., p. 153), the Cathedral Dean at this time was Hugo Cratz von Scharfenstein, who was elected Feb. 4, 1588, and held the post till his promotion to the Provostship in 1623. The name of Paulus auf Grimburg adds a straw more to our suspicions of the Amtmann of Grimburg. Dean Cratz was later repeatedly accused by the witches of St. Maximin.

<sup>3</sup> Flade trial, p. 228. The second Jesuit was Father Joannes Gilsius, magister novitiorum, and later Rector, of his college at Trier. Both he and Father Ellentz, but especially the latter, saw much service as witch-confessors. Masen tells (in his *Epitome Ann. Trev.*, p. 710) a curious story of how, when once Father Ellentz was attending a witch to the stake, the Devil, who had a special spite against him, tried to kill him with a hail-storm.

<sup>4</sup> The more notable was Peter Behr, a man who had earlier played a large part, as a leader of the popular party, in the struggle for the city's independence. Behr, too, was tortured into a confession of witchcraft, but committed suicide by flinging himself from the tower in which he was imprisoned.

assembled public.<sup>1</sup> The Assessors brought in their verdict, and, as the clerk uttered the terrible closing words of the sentence—that “Dietrich Flade, the accused, now standing in the presence of this court, by reason of his crime, in that he denied God, devoted himself to the Evil One, served him and sinned with him, dealt with witchcraft and did despite to the common weal, wrought injury to grain and herb, shall be punished with fire, from life unto death, as we him hereby thereunto doom, sentence, and condemn, to Almighty God and his mercy commending his soul”—the Acting Judge rose from the seat where for thirty years Dietrich Flade himself had presided in honor and confirmed the sentence by breaking his staff of office. Thereupon, as was the custom, the condemned man fell upon his knees and craved the mercy of the court; in token whereof he was accordingly commended to the executioner, to be first “mercifully and Christianly strangled,” and his body then burned to ashes.<sup>2</sup>

“Thus,” writes one who must have been an eye-witness,<sup>3</sup> “as a criminal and dishonored, he heard his sentence from the very court whose severity he himself as judge had

<sup>1</sup> Excepting, of course, that part of it which spoke of the plot against the Elector.

<sup>2</sup> Flade trial, pp. 234-251.

<sup>3</sup> The Jesuit Brouwer (in his *Ann. Trev.*, lib. xxii.). “*Magiæ et artium execrandarum, quæ variis indiciis et ipsâ confessione rei cumulabantur, damnatus, sententiam mortis ex illo tribunali, cujus nempe severitatem multis ipse annis iudex moderatus erat, audiit reus ac sordidatus. Prodeuntem ad supplicii locum, quod iter gravescente licet ætate et fessus ærumnis, pedibus facere voluit, universa spectaculi novitate prosecuta civitas: cùm ipse interim in omni via tam altos spiritus gereret, ut omnibus animi fortitudinem in illa tanta dejectione suspicientibus, nullam ederet vocem, quâ se vel casum suum mortisve probrosæ miseraretur infamiam. Ubi ad pyram perventum, circumfusam multitudinem oratione tempori aptâ, nec infracto quicquam animo, allocutus est, hortatusque ut illud exemplum exitus tam luctuosi acciperent pro documento, fraudes dolosque inimicissimi Satanae vitandi. Quibus dictis et factis, animâ præsertim per Societatis Jesu sacerdotem Christianæ poenitentiae præsidii instructâ, atrocitatem culpæ reus minuit, mortem verò civibus approbavit.*” In the margin at this passage Brouwer’s seventeenth-century editor and continuator, Masen, has printed, “*Vide hac de re Notas et Additamenta nostra inferius*”; but repeated and most careful search has failed to show me anything on this head in his notes and additions. Perhaps he wished to add the wild story he later published in his *Epitome* (see p. 46 below).



for many years restrained. As he went to the place of execution, whither, though he was in declining years and was worn out by his troubles, he insisted on going afoot, the whole city, stirred by the novel sight, followed after. And yet, with such lofty spirit did he bear himself that to not one of all those who beheld his self-control in that terrible humiliation did he utter a word of complaint for himself or his fall or the infamy of his ignominious death. When the stake was reached he addressed the thronging crowd in words suited to the occasion and with unbroken spirit, exhorting them to learn from the example of his mournful fate to shun the deceits and wiles of the arch-enemy Satan. Thus by word and deed the criminal mitigated the atrocity of his crime, yet justified to his townsmen his death." It was the 18th of September, 1589.

Such was the fate of Dietrich Flade. Was he a martyr, or was he only one more victim of a superstition which he shared and to which he had sacrificed others? No historian makes answer. The ripple of interest stirred by his fate throughout Europe found only scanty record in the contemporary annals<sup>1</sup>; and even the periodical "relations," then

<sup>1</sup> The minorite Cratepolius, in his *De Germaniæ episcopis et orthodoxis doctoribus*, etc. (Cöln, 1592), speaks (pp. 230, 231) of "quidam non infimæ apud Reveren. Electorem autoritatis Doctor Flat," who "annis superioribus" deservedly suffered death for his witchcraft; and Haraeus, in his *Annales ducum Brabantie* (Antwerp, 1623), also mentions with approval the execution of "celebris pridem Doctor I[uris] V[triusque] Flattenus, Electoris Trevirensis Consiliarius." A Cöln chronicle, still unprinted (*Chronicon Coloniense*, 1500-1596, CölnStadt-Bibliothek, A. II. 70), speaks somewhat more fully of his fate, but suppresses his name, saying: "nomen viri factumque ab aliis multis proditum non attinet pluribus enarrare." Similarly circumspect is a little Trier manuscript (codex 1355 of the Trier Stadt-Bibliothek), which tells us under 1589, that "Treviris Senator quidam N. Fl. afficitur Supplicio magiæ debito post seriam dehortationem à curiositate." But this manuscript, which bears the name and date of Joannes Henricus Anethanus, Trevirensis, 1647, and is not improbably the work of that Weihbischof, is clearly only a summary of the *Annales Trev.* of Brouwer; and, indeed, there is appended to it a similar summary of his *Metropolis*. It is not this manuscript, but a blundering copy of it, still to be found at Bonn (in the volume called *Gesta Pontificum Trevirorum*, No. 343 of the University Library), that is printed by Hontheim in his *Prodromus* as "codex Canonie Eberhardo-Clusane."



fast ripening into the modern newspaper, cared only for the tragic story of the man himself,<sup>1</sup> while the news-letters which scattered broadcast over the empire the tidings of the horrible confession and death of such a monster turned him outright into another and a wickeder Faust.<sup>2</sup> Even

<sup>1</sup> Thus Eyzinger's *Relationis historica continuatio* . . . *biss auf den 19. tag Septemb. 1589* (Cöln, 1589), where oddly enough Flade's death is entered under 26 May. How the *Fl* of Flattenus becomes the *H* of Hattenus is easier to see. Among the witches of Trier, says the relation, "war auch einer auss den Furnembsten Räthen des Churfursten zu Trier, eines grossen vermögens und reich mit namen Hattenus ein Rechtsgelehrter, diser wardt gefencklich eingetzozen, unnd fur einen zauberer in die sechs monat gefangen gehalten, als er aber das Factum bekentdt, welches man ime fur zauberey aufflegen wolt, und dagegen sustineret, wie dass es allein Magia ware, unnd dahin nit verstanden kunte werden, als soll es mit dem, so er bewiesen und gethon, fur straffliche zauberey gerechnet werden, angesehen es alles der natur gemess und nichts teufflich oder obgöttisch, so begehret er derhalben relaxirt, und der gefenckhnuss entschlagen zuwerden. Man hielt aber denselben, als einen Radl fuhrer der andern zauberer, welches mit ime gehalten, damit man nun den andern ein forcht an jaget von ihrer zauberey abzustehen. . . . So ist der gemelt Hattenus allezeit den 26. Tag Maii von wegen zauberey zum todt verurtheilt und gericht worden, darauss woll ab zunemen, das er nit naturaliter sonder Diabolice mit der khunst wider Gott unnd wider sein Gebott, dem menschlichen geschlacht zuschaden an leib und Seel umgangen ist."

<sup>2</sup> Before the end of 1589 Nicolaus Schreiber at Cöln printed a *Warhafftige und erschreckliche Beschreibung von vielen Zauberern oder Hexen, wie und warumb man sie hin und wider, verbrandt, in disem 1589. Jahre*, etc., (see Prutz, *Geschichte des deutschen Journalismus*, p. 167). This I have not seen; but there is every reason to believe that it is precisely this which in 1594 he reprinted as the second of *Drei Warhafftige Newe Zeitung* (No. 777 of Weller's *Die ersten deutschen Zeitungen*)—*Die ander, Von vilen Hexen und Unholden, die man . . . im Trierischen Land, und andern Orten verbrenndt hat*, etc. In this (I have used the copy in the Kantonal-Bibliothek at Aarau in Switzerland), several of whose fifteen stanzas are devoted to Flade, though without naming him, he is thus introduced:

"Nun muss ich jetzund zeigen an,  
Sie hetten under in einen Hauptman,  
derselb ihr König ware,  
Ein furtrefflicher gelehrter Mann,  
Doctor in der Astronomy schon,  
unnd aller Kunst erfahren,  
der hat mit seiner Zauberey,  
gross hertzen Leid gestiftet,  
vil Menschen unnd Vieh mancherley,  
gestorben und vergiftet,  
dem Doctor Fausto vergleichet er,

in his own home, history soon yielded him to legend. Not a century had gone before he appeared in the pages of Masen<sup>1</sup> as a second Theophilus, led in his youth into magic by a student's curiosity and bargaining with the Devil for learning and station at the price of merely teaching that "Hell is not so hot, nor the Devil so black, as people think"; but cheated at last by his Satanic ally, who tempts him to go masked to the witch-sabbaths, that he may the more easily convict the witches brought before his court, then at last unmasks him to the others' sight and leaves him the victim of their vengeance.

But, a decade after Flade's death, the learned Jesuit Delrio, writing at Liège, less than a hundred miles away, his monumental book in support of witch-persecution, and needing a modern instance to stay his doctrine that the

von seiner Zaubereye,  
ein grosses Buch zu schreiben wer."

It surely was not without its influence on Flade's fate that it was just the years of his accusation and trial which saw the appearance of the Faust *Volksbücher*; and it is possible that his fate was not without its counter-influence on the popular interest in the Faust story.

<sup>1</sup> *Epitome Ann. Trev.* (Trier, 1676), p. 691. "Quando rursum domestica Magorum infamia Treviris, in præcipuæ etiam dignitatis persona, Theodorico reorum Judice atque urbis Præto, ipso non diffidente, emanavit. Qui quidem, ut ex Actis Judicialibus notum, rudibus annis, curiositate libri, quo Dæmon, ad secretas artes tradendas evocabatur, ductus, cum legeret mox præsentem, honestâ viri specie, Dæmonem habuit. Qui ad studia, quorum amore tenebatur se eidem promotorem obtulit: nec quicquam postulavit obsequii, nisi, ut cum sermo ita ferret, diceret: *Infernum non adeò esse calidum, nec Dæmonem tam nigrum esse, quàm vulgus fingeret.*

"Et quidem tantum literis jurisque demum scientia excelluit, ut Principi à consiliis factus, Judiciis demum etiam præsideret. Sed cum sensim eum abduxisset Dæmon longius, impetrassetque, ut Magorum conventibus, larvâ ipse tectus, interesset, ideoque in quæstionibus exercendis à se conspectos facilius convinceret, fefellit denique pleno in consensu Dæmon, larvamque detraxit; unde à suis consortibus in societatem criminis vocatus, licet diu restiterit; quod ab invidia, non veritate, profectam accusationem sontium examinatores crederent: tamen postremò testimoniis obrutus, postquam sine noxa cujusquam se hoc crimen admisisse diu frustra contendisset, cessit justitiæ. . . . Cognomentum tamen Rei, munerumque quæ obiit gravitatem, consultò quorundam in gratiam dissimulamus."

The oddest thing about this odd tale is that Masen claims to know it "ex Actis Judicialibus."

protector of witches is probably himself a witch, wrote this startling sentence: "In our own times Dr. Vlaet, one of the councillors of the Elector of Trier, tried this with all his might and main; but to him stoutly opposed himself Peter Binsfeld with a learnedly written confutation of his error—to wit, his book 'On the Confessions of Witches.'" "This Vlaet," he adds, "being arrested, at last confessed his crime and deceit, and was burned at the stake."<sup>1</sup>

The statement is not incredible. True, Bishop Binsfeld himself, who first published his book in 1589,<sup>2</sup> the very year of Flade's trial and death, does not mention his name<sup>3</sup>; but there is much in the book that is hardly less significant. In the preface to this first edition he expressly tells us that he prints it in the hope of dispelling a skepticism which hindered the punishment of witches in his own home.<sup>4</sup> It is to

<sup>1</sup> Delrio, *Disquisitiones magicæ* (Louvain, 1599-1601), lib. v., § 4 (vol. iii., p. 36). Flade had already been mentioned at lib. ii., qu. 12; and in later editions he is again named at lib. v., § 16. In the earlier draft of Delrio's book, in the National Library at Brussels (codex 3633: *De superstitione et malis artibus*), Flade is not mentioned; but the passage quoted appears unchanged in all the revisions of the printed work. Delrio, I think, never visited Trier, though in a letter to Justus Lipsius (Burmans's *Sylloges epistolarum*, Leyden, 1731, vol. i.) of June 3, 1591, he speaks of meaning to do so ("Cogito hinc Treviros, atque illinc ad vos," etc.); but between that city and Liège intercourse was constant, and in the same letter Delrio mentions the arrival, while he was writing, of messages "quas tabellarius Trevirensis attulit." Moreover Delrio's book, which made much stir in the learned world, must have been at once known to his fellow-Jesuits at Trier; and, though Binsfeld was dead (in 1598), there were many (as Father Ellentz or Christoph Brouwer) who must have known whether the statement about Flade was true and who could have been trusted to prevent an error's recurrence in later editions.

<sup>2</sup> See note, p. 13 above.

<sup>3</sup> This is not strange. Even when, in a later edition, Binsfeld had occasion to confute Loos, who had written a book in reply to him, he out of professed courtesy suppressed his adversary's name; and Loos himself had been not less considerate. Moreover, as we have already seen, *all* Trier writers of the time conceal Flade's name—doubtless out of regard for his family. Both the Flades and the Homphaei continued to hold positions of dignity in the Electorate.

<sup>4</sup> Being the more willing to publish it, he says, "quantò certius cognovi plures esse, . . . qui profecto aut propria privataque affectione depressi, aut dæmonum illusionem excæcati, non cognoscunt, nec sentiunt, nos omnes in hac

judges, above all, that from beginning to end his book is addressed: their sluggishness, their errors, their doubts, receive his longest and most earnest paragraphs. Nor is what he combats a mere general incredulity as to the worth of the witch-confessions; it is a particular form of it—the form represented not by the physician Weyer, whose heresies on this point were the current ones, but by the long-dead jurist Ponzinibius, who did not question the testimony of the witches against themselves, but denied all validity to their denunciation of others. “I have wished,” says Binsfeld, “the principal scope of my treatise to be the question, whether faith is to be put in the confession of witches against their accomplices”; and only for the better elucidation of this does he treat the general question at all. That the objections of Ponzinibius are matters of present importance he proves by an illustration: “I remember,” he says, “myself to have heard from a certain jurist (whether in earnest or in jest I cannot say) that he cared naught for a thousand denunciations.” And he devotes the closing paragraphs of his work to refuting those who explain the denunciations by the theory that the Devil can himself impersonate whom he will at the witch-sabbaths.<sup>1</sup>

Now, the only tribunal in Bishop Binsfeld's neighborhood, of whose sluggishness, so far as extant records show, he could have reason to complain, was that of which Dietrich Flade was the head. Witch-trials this court also had, even under his presidency, as with so zealous a public prosecutor as Johann Zandt it could hardly help having; but, as compared with the terrible activity of its rural neighbors or with its own after Flade's death, there is reason enough to suspect it of sloth.<sup>2</sup> As if to prove that its rival, the ecclesi-

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*patria ob multitudinem Maleficorum et Sagarum, non solum periclitari in vita, fortunæ rebusque omnibus ad humanæ vitæ conservationem necessariis, sed etiam gravissimo animarum salutis discrimini exponi.*”

<sup>1</sup> And it is to be noted how the original preface is dropped, and all the proportions of the work changed, in the later editions, when he has the book of Loos and the theories of Weyer to answer.

<sup>2</sup> That witches had been condemned by it, we know from Flade's own mouth, for when asked, in the course of his confession, how, knowing himself guilty of

astical court at Trier, shared none of this caution, the learned Official at its head, Bartel Bodegem, contributed to Binsfeld's book an introductory poem, in which he too attacks such judicial heresies.<sup>1</sup>

Moreover, these views coincide wholly with what little we know of Flade's opinions. There is nothing in his trial to suggest that he doubted the existence of witches; but we have seen how he repeatedly tried to meet the accusations against him by urging that the Devil must have assumed his person. Hardly could the torture itself drive him from this position; and, when forced to confess against others, he over and over again qualified his accusation by adding: "But whether it was himself in person or only the Evil One in his form I cannot say." And it could hardly have been mere selfish cowardice, when, on the morning after his first taste of the torture, Johann Zandt and Dr. Hultzbach asked him what conclusion he had reached during the night, he replied: "This evil is not to be helped by severity; but through penitence, sorrow, and penance many might be won back, if only mercy were shown them."<sup>2</sup> Therefore, whether it were the stout obstinacy of Greth Braun at the beginning of his dealings with witches, or only his own costly experience at the end, that suggested them, it seems tolerably clear that before his death Dietrich Flade held the opinions which Peter Binsfeld fought; and the phrase in which we have heard the Jesuit witness of his death describe

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just such crimes, he could yet help condemn others to death, he could only reply that not he, but the Assessors, pronounced the sentence, and that he only confirmed it by breaking the staff. ("Weill er sich in diesen unnd dergleichen stucken selbst schuldigh gewust, wie er dan andere zum thodt verurtheilen helffen kunnen? Sagt er hab kein urtheill gesprochen, sonder die Scheffen, unnd er hab allein die urtheill mit brechungh dess stabs confirmirt." (Flade trial, p. 223.)

<sup>1</sup> Bartholomaeus von Bodegem (as he wrote his own name) was Official at Trier from 1578 to 1608. He was a native of Delft, and was a correspondent of both the elder and the younger Grotius. His rich collection of books, bequeathed to the Jesuits, is now a part of the City Library at Trier, and its volumes on witchcraft attest his interest in that subject. Is it significant, however, that his verses were not reprinted by Binsfeld in subsequent editions, a fresh *Carmen contra maleficos* by one "A. v. Bruele, S. Th. D.," being substituted?

<sup>2</sup> Flade trial, p. 195.



his relation to the court which condemned him points strongly to the earlier date.

Nor is it inconsistent with this that those who later wrote against the persecution say nothing of his views; for by his confession he had become the best argument of their opponents. So when, a year or two after Flade's death, there came to the University of Trier the fiery Dutch professor, Cornelius Loos, who, led by Weyer's reasoning into a more thoroughgoing skepticism, dared to write a book in reply to Binsfeld, it was only the dark allusions inserted by the latter, in the second edition of his work, to the confession of a learned man, by which the witch-sabbath was proved no dream of deluded old women merely, that drove him to mention Flade at all.<sup>1</sup> And the canon, Linden, who, though an eye-witness, must have been but a youth, and not till a quarter-century later wrote that scathing account of the persecution at Trier by which it is chiefly known to history, may well have forgotten, if he ever knew, the hesitation of the judge whom he is content with enumerating among its victims.<sup>2</sup>

<sup>1</sup> I know, cries Loos (in his *De vera et falsa magia*, lib. i., cap. 39), whom you mean by the "viri docti," whose confession of witchcraft you urge. "Quantum hinc conjectura consequi licet, scio et mecum unà plurimi, quisnam doctor, et quinam alii sunt: si ab eruditione commendati, non jam quaero. Verum ut una hirundo (sicut in proverbio est) non facit ver; nec unus et alter fortè insulsus et infatuatus doctor . . . fidem in re ardua nequaquam faciunt. . . . Ut modò non discutiatur, ne parùm hinc instructi mox offendantur, tum prudentes et rem præsentem hanc intelligentes, invisæ prolixitate graventur: num illi, quorum tacitis nominibus ingeritur mentio, delati citiùs de magiæ crimine fuerint, quàm verè convicti: tum calumniis consternati, et ignominia turbati, ad hæc quæstioni liberis personis, tum eruditione et dignitate conspicuis indigne subjecti: et pœnis tum contumeliosis, tum acerbis divexati, extortum potiùs emisierint confessionem, quàm veram dederint: ut infelici vitæ misera morte semel finem facerent." He promises, indeed, that "de hac in sequentibus, prout institutum foret, fusiùs dicetur." But these later pages were perhaps never written. Only a few sheets of his book had been printed when it was seized by the ecclesiastical authorities, and for centuries it was thought lost, until, in 1886, it was my good fortune to find the manuscript of the first two of its four books on the shelves of the Stadt-Bibliothek at Trier. Since then, so much of it as had been printed has been unearthed at the library of Coln.

<sup>2</sup> This cardinal passage may be found in Hontheim, *Hist. Trev. Dipl.*, iii. (p. 170, note), and in the *Gesta Trev.*, ed. Wyttenbach and Müller; but neither of these follows with absolute accuracy Linden's autograph (codex 1359



But had Dr. Flade's opinions aught to do with his fate? We may never know. Whatever their remoter share in it, few modern students of the story, I think, will doubt that its chief agent was the Freiherr Zandt von Merl. But there are many ways in which the Judge may have stood in the way of the Governor. Johann Zandt was, it is true—as might be much more fully shown—one of the most zealous of witch-persecutors, and, it is to be feared, not one of the most disinterested. There is abundant reason to suspect him of impatience of the city's slowness to share the panic.<sup>1</sup> Beyond that, all is conjecture.

of the Trier Stadt-Bibliothek), and I therefore transcribe it here with care from the manuscript :

“Quia vulgo creditum, multorum annorum continuatam sterilitatem à strigibus et maleficis diabolicâ invidiâ causari ; tota patria in extinctionem maleficarum insurrexit. Hunc motum juvabant multi officiati ex hujusmodi cineribus aurum et divitias sperantes. Unde tota Diocesi in oppidis et villis per Tribunalia currebant selecti accusatores, Inquisitores, Apparitores, Scabini, Judices, Lictores, qui homines utriusque sexus trahebant in causam et quæstiones, ac magno numero exurebant. Vix aliquis eorum qui accusati sunt, supplicium evasit. Nec parvum fuit Magnatibus in urbe Trevirensi. Nam Prætor cum duobus Consulibus, Senatoribus aliquot et Scabinis incinerati sunt. Canonici diversorum Collegiorum, Parochi, Decani rurales in eadem fuere damnatione. Tandem eousque furentis populi [et] Judicum insania processerat sanguinem et prædam sitientium, ut vix inventus fuerit, qui non aliquâ huius sceleris maculâ notaretur. Interim Notarii, Actuarii et Caupones ditiescebant. Carnifex generoso equo instar aulici nobilis ferebatur, auro, argentoque vestitus : uxor ejus vestium luxu certabat cum Nobilioribus. Supplicio affectorum liberi exulabant ; bona publicabantur : deficiebat Arator et Vinitor, hinc sterilitas. Vix putatur sævior pestis aut atrocior hostis peragrasse Trevirensium fines, quàm hic immodicæ inquisitionis et persecutionis modus : plurima apparebant argumenta non omnes fuisse noxios. Durabat hæc persecutio complures annos ; et nonnulli qui Justitiæ præerant, gloriabantur in pluralitate palorum, ad quorum singulos, singula humana corpora Vulcano tradita.

“Tandem cum hæc sentina assiduo Vulcano non exhauriretur ; depauperarentur autem subditi ; leges inquisitionibus et Inquisitoribus eorumque quæstui et sumptibus latæ et exercitæ sunt ; subitoque sicut in bello, deficiente pecuniæ nervo, cessavit impetus Inquirentium. Observatum fuit paucos, opes ex hac laniena corrasas ad tertios hæredes transtulisse.”

The verses hereto added by Wyttenbach are not in Linden's MS. In 1599 Linden was already canon of St. Simeon and J. U. D. His chronicle breaks off at 1626 ; but he was still living in 1637, and is said to have died in 1639.

<sup>1</sup> Nobody who has read Linden's words will count it rash to suspect him of avarice. His victims were largely rich men. In 1591 the Elector himself was

Had he accomplices? Were the Jesuits his allies? Were they his tools, or was he theirs? The ablest of the historians of witchcraft has charged their order with using the witch-persecution as a cloak for the punishment of heresy and seeking to burn as witches those whom under the law of the Empire they could no longer burn as heretics; and he bases this charge largely on the history of the persecution at Trier.<sup>1</sup> After a careful study of the documents left us, I find as yet no reason to share his view. The heretics were indeed not yet rooted out at Trier. Persecution for heresy went on side by side with persecution for witchcraft.<sup>2</sup> It would have been strange, in sooth, if the two Satanic crimes were never associated in fervid minds; nor could one wonder if those who severed themselves religiously from the sympathy of their neighbors had been most easily suspected of so unnatural a sin as witchcraft.<sup>3</sup> Heresy could surely not be expected to mitigate the severity of their judges. But that this suspicion was actually felt, or that the Jesuits ever consciously confused the two crimes, I find scant evidence.<sup>4</sup>

forced to limit by an edict the exorbitant costs of the trials. In 1595 a St. Maximin witch, Meyers Crist of Riol, testified that, though she knew she had been accused of witchcraft, she took no steps to clear herself, because "sie sehe woll wie es geschaffen, dan die Hern brennen allein die Reichen, und drachten dem gut allein nach" (see her trial, in Trier Stadt-Bibliothek). Could fear have had its share, too, with Johann Zandt? In 1591 he told Nicolas Fiedler he would gladly have spared him, but for the common cry from everywhere outside the city that "Ich, Schultheiss unnd Scheffen wollen keine gerechtigkeit administriern, mit Ahmhdung [Anmuthung] wir seien solichen verdamblichen lasters villicht auch schuldig," wherefore they "habenn darumb krafft unserer eidt unnd pflicht, Auch unsere Personen zu entschuldigen, denn Anfang mit euch unnd andern denuntiirten Personen machen muessen."

<sup>1</sup> Soldan, *Geschichte der Hexenprocesse* (Stuttgart, 1843), pp. 358-361; and *neu bearbeitet von H. Hepp* (Stuttgart, 1880), ii., pp. 33-37.

<sup>2</sup> The Jesuit letters are full of it. In 1588, we are told, sixty persons at Trier abjured their heresy. Not until 1596 do we read that "non fere ulli sunt hac infecta labe in hac Urbe."

<sup>3</sup> Thus in Protestant lands, as at Paderborn, the Jesuits were themselves suspected of complicity with the Devil and of the use of witchcraft.

<sup>4</sup> The darkest fact is their constantly harboring the boy-informers; for, alas, the instances we have met were by no means the only ones. Again and again we hear of it; and even so late as 1599 we learn from them how a "puer annorum trium et decem, veneficiis ad nocturna nefandaque consortia traduce-

There is no savor of heresy in the witch-confessions left to us, though every effort was made to trace witchcraft to Protestantism, and though all the older witches were made to confess that it came into the Electorate with the raid of Albert of Brandenburg, in 1552. The Devil at Trier was, in truth, a very orthodox Devil, who always spoke of the Virgin Mary as "the Bride," and insisted on his servants renouncing the Saints as well as the Godhead, and on their treating the sacrament as the veritable body of Christ. Nay, we read, in the letter of the Trier Jesuits for 1588, that "of all the nets of Satan which he devotes himself to weaving for the ruin of good people, this is perhaps the most notable that those whom he can nowise seduce from the pure fount of the Roman faith by the teachings of heretics" he leads into witchcraft.<sup>1</sup>

At all events, Dietrich Flade was no Protestant. He confessed,<sup>2</sup> indeed, that he had harbored religious doubts, and even ascribed to them his fall into the power of Satan; but the one doubt he named—a questioning of the need of the sacrifice of Christ for man's salvation—was not one of those that divided the warring faiths. All his life he had been a leader of the Catholic party; and his most devoted friend till death was apparently his Jesuit confessor, Father Ellentz. And if it seems strange that men so subtle as the Jesuit fathers could be played upon by the boy-accomplices of Johann Zandt, one must remember that a Justus Lipsius was even then standing sponsor to the witch-code of a Delrio. Such men had once for all turned their backs on the protests of the carnal reason.

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batur, cœpit inde personas et scelera detegere," and how they saved him from the molestations of Satan. That the Jesuits were the most ardent promoters of both persecutions goes without saying. They boasted that they had almost a monopoly of the spiritual care of the witches. That they had great power of life and death is clear from their stories of those spared at their request.

<sup>1</sup> In 1591 Johann Zandt complained to his colleagues of the court that "dass laster der Zauberey dermassen weit eingerissen, dass balt die frombsten, und so man darvur gehalten, darmit besodelt gefonden werden." Binsfeld expressly names excessive piety as a ground for suspicion of witchcraft.

<sup>2</sup> Flade trial, pp. 193, 194.

Nor is it hard to see by what means the Governor won their hearts. In their letter for 1588 we read, in touching detail, how "the man foremost at Trier in authority, wealth, and station, a man companionable and affable to all," falling into conversation with a woman of low degree, was suddenly bewitched by her with such an illness that no remedies could put him out of his pain till some of the fathers came to his relief with masses, prayers, and sacred music; how this man, because, as his high office required, he was wont to enforce the laws severely against these wicked crones, was often thus assailed with witchcraft; and how, when once a peasant woman offered him some eggs, and the boy who was with him had taken them in his cap, the eggs were no sooner emptied out and the cap put back on the boy's head than the lad was seized with a frenzy of pain, which was only stilled by his rushing to the nearest church and plunging his head into the holy-water font. The woman, of course, was tortured into confession, and explained how she had prepared the eggs for the destruction of the great man. And in the Jesuit letter for 1589, in the same breath in which they tell us of the death of Flade and his fellows, they add with joy that at a public dinner the Governor "did not hesitate to say that he would be unwilling to fill so troublesome and dangerous an office, were he not so greatly helped by our devotion in preparing the souls of the witches to meet death bravely." What wonder that a man who knew so well how to use the superstition and the vanity of his fellows should have prospered in his crimes as in his ambitions?<sup>1</sup>

But, if to Johann Zandt belongs the largest share in the fate of Dietrich Flade, one only less great belongs to His Electoral Grace, Johann VII. of Trier. Who may have

<sup>1</sup> Binsfeld, too, was a dupe of Johann Zandt; to him he owed that remarkable story of the power of consecrated church-bells over the witches—an indirect result of which, perhaps, was the custom, kept up at Trier for centuries, of ringing the city church-bells all night throughout the month of May. In 1599 Zandt had left the Governorship for the higher post of Landhofmeister; and in 1611, when the worthy chronicler, Johann Mechtel, had the honor of sitting next him at dinner, he was still thriving in that office.

stood beside or behind him in his action we can but guess; a certain querulousness and a sovereign contempt of exactitude in his rescripts savor of his unaided hand. Nor may we know whether he was most moved by personal fear or by superstitious zeal, or perchance by something more than these. The sincerity of his belief in witchcraft it is hard to doubt; and touching is the firmness of his conviction that whatever is said after priestly absolution, at the risk of their souls, by men and women in the face of death must be true. Nay, even in those later and to our eyes far more damaging insinuations against Flade's purity and honor as a magistrate he must have put some faith, or he would hardly have chosen to lay them before that jurist's academic colleagues. Yet there is much beside their evident malice to make us hesitate fully to credit them. The non-reply of the theological faculty, the general esteem in which Dr. Flade stood, the almost eulogistic words of the Jesuit Brouwer, the absence of such charges in the testimony upon his trial, and the silence of opponents like Binsfeld and the Jesuit letter-writers, who could have pointed with his fault so tempting a moral, not to mention his own repeated appeals to the faithfulness of his official service, if not conclusive of his innocence, ought surely to outweigh charges so suspiciously partisan. Not even in the torture did he confess to any lapse from honesty; and not legend itself, though it ascribed his wealth to diabolic aid, ever dreamed it gained by diabolic methods. That the old Judge loved money may well have been true; but the love of money could hardly have been criminal which refused to make use of the means by which his fellow-magistrates were everywhere enriching themselves—the persecution of witches. It was of this persecution in the district of Trier that Linden wrote: "Notaries, copyists, and innkeepers grew rich. The executioner rode on a blooded horse, like a courtier, clad in gold and silver; his wife vied with noble dames in the richness of her array." "Not," he adds, "till suddenly, as in war, the money gave out, did the zeal of the inquisitors flag." Two years after Flade's death, Johann VII. himself had to



interpose with an edict to check the impoverishment of his subjects by the witch-hunters.<sup>1</sup>

Nay, the Elector himself has not wholly escaped the suspicion of avarice. May not the wealth of Flade have played another part in hastening his fate? Confiscation of the property of witches was not usual at Trier<sup>2</sup>; but there is still extant a letter of the Elector's,<sup>3</sup> wherein he informs the civic authorities of Trier that, "inasmuch as we find among Dr. Dietrich Flade's property a note specifying four thousand gulden in gold as in the keeping of the city of Trier, the disposition of which for peculiar reasons, as you perhaps may know, belongs to us," therefore the sum may be divided among the parish-churches of the city. Now, this was but a small part of his wealth; for there also remains an inventory of his property, taken in 1590 by the town-clerk of Trier, which shows it to have been vast.<sup>4</sup> Is it possible,

<sup>1</sup> It may be found in Hontheim, *Hist. Trev. Dipl.*, iii. The original is still at Trier (codex 2529 of the Stadt-Bibliothek).

<sup>2</sup> Brouwer expressly commends the Elector because "è damnatorum bonis, quod legibus poterat, nihil sibi fiscus vindicaret." By the charter of 1580 were relinquished, out of special grace, to the citizens of Trier, all confiscations, "ausserhalb denselben, so in Kayserlichen rechten ausstrücklich begrieffen sind"; and Binsfeld repeatedly tells us (as on p. 23 of the ed. of 1589) that witches were thus exempt from confiscation, complaining in the same breath that "quidam judices cum ex confiscatione bonorum nihil habere possint, sub aliis coloribus vel expensarum, vel vacantiarum aut laborum, in rei veritatem, quod abominandum est, et contra justitiam et æquitatem, ita confiscant Reorum bona, ut pupilli et viduæ non rarò ad summam necessitatem redigantur." In 1591 Nicolas Fiedler *did* bequeath his property, as is clear from the records of his trial. The words of Linden, which have misled Soldan and others, therefore apply, I think, only to those who were banished. But in Flade's case the same misunderstanding of his letter which we have noted above (p. 37) may have served the Elector as a pretext for confiscation. Dr. Kraus, I know not on what authority, says that his house at Pfalzel was confiscated.

<sup>3</sup> Of March 4, 1591. The original, signed by Johann's own hand, is in codex 1618. g. of the Trier Stadt-Bibliothek, and a copy of it in codex 1502 of the same library. The "Flade-Stiftung" so created still flourishes at Trier.

<sup>4</sup> This inventory, cited by Wyttenbach and Müller in their notes to the *Gesta Trev.*, I have not been able to find. They give as its title: "General-Inventarium aller Güter, so dem Ehrenvesten und Hochgelehrten Herrn Diederichen Flade Doctor, Schultheissen zu Trier selbigen zugestanden, welche in seinem Hause theils, und im Rathhause zu unterschiedlichen Tagen und Zeiten inventaryrt worden." It is doubtless that of p. 38, note 2, above.

then, that it was his riches that cost him reputation and life? What profit, beyond his fees on the trial, could have been hoped by Johann Zandt von Merl, it is vain to guess; but, if any still suspect the Jesuits, it will be remembered that on them, above all, the wealth of Johann VII. was lavished.

Yet a kindlier conjecture offers itself. "A wealthy person," says the letter of the Trier Jesuits for 1589, "absolved by priests of our order from the crimes of a whole life,<sup>1</sup> left by will a sum of many thousands in gold for the relief of the poverty of needy burghers, monks, and priests, founding what is called a *mons pietatis*."<sup>2</sup> And it must be added that his own mention of his "inheritance" on the morning of his death lends something to the likelihood of this solution.<sup>3</sup> May not the Elector have been only the administrator of his estate?

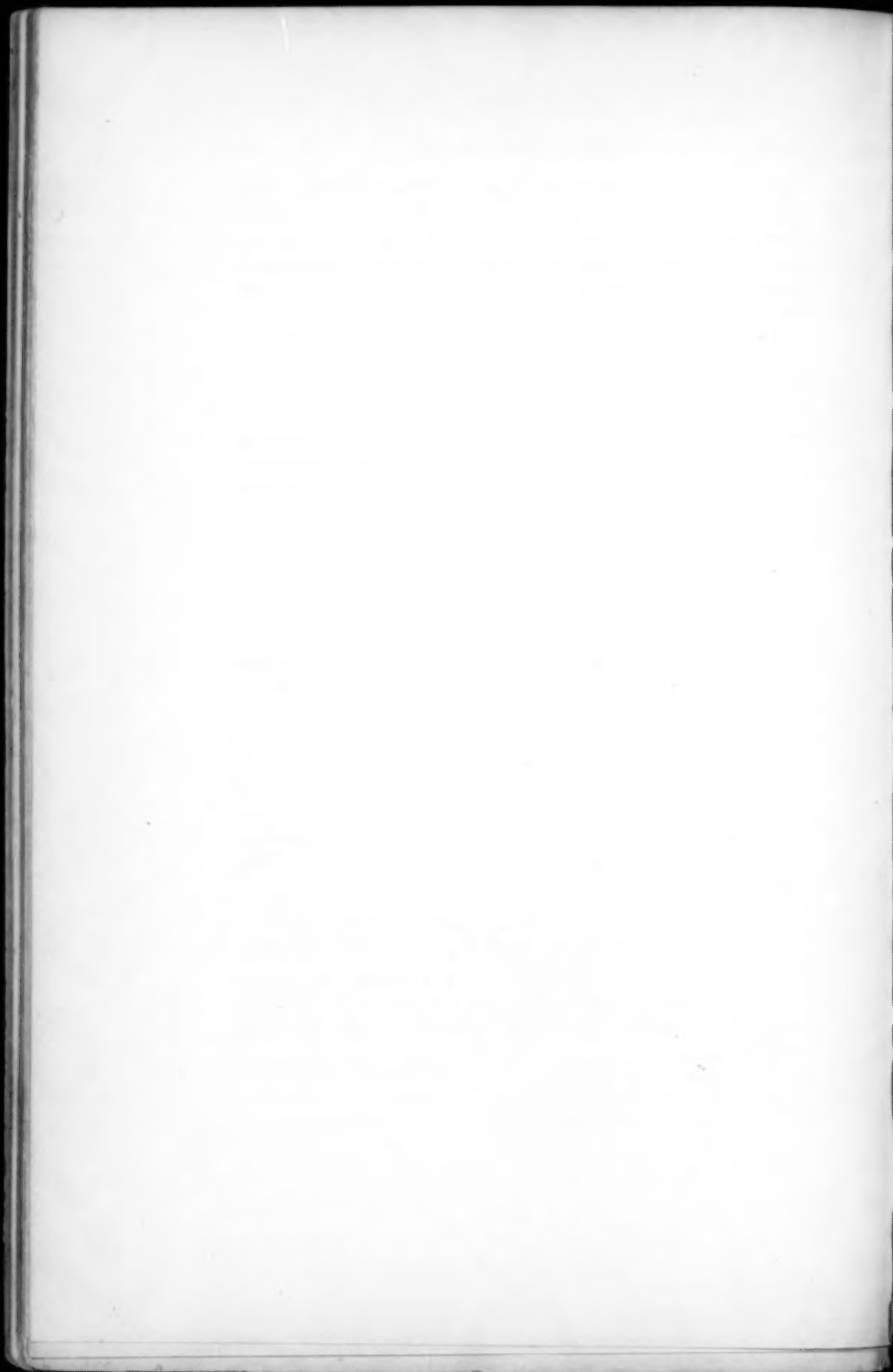
It is, then, still possible that, as most scholars have believed, Dietrich Flade owed his death chiefly, if indirectly, to his hesitancy in the persecution of witches.

Perhaps I have lingered too long over the story of a man whom the world has seemed willing to forget. Dietrich Flade was not a martyr—scarcely even a hero. Little as we know of him, it is clear that he died for something less than a principle, and flinched at last before the end came. Yet it is something to know that, even in that most drearily doctrinaire of ages, there lived plodding men of affairs, who, spite of dogma and of panic, clung to their common-sense and their humanity, and with such firmness as was in them breasted the fate that came.

<sup>1</sup> "Homo copiosus totius vitæ criminibus absolutus, opera nostrorum."

<sup>2</sup> One of those establishments for loaning money to the poor, better known to us by their French name of *monts-de-piété*.

<sup>3</sup> He not only speaks of his "heredität," but directs the payment of his debts and of certain gifts, and that "wo sichs findt, dass ich etwas unordentlichs oder woetherlichs uffgehaben und empfangen, soll wiederumb gegeben werden."



THE PHILOSOPHIC ASPECTS OF HISTORY





## THE PHILOSOPHIC ASPECTS OF HISTORY.

By HON. WM. T. HARRIS, LL.D., Commissioner of Education.

Every science must put on a philosophic form before it becomes useful in practical life. If this sounds strange to any one let him consider that a science (and let each one conceive here his own favorite special science, say history for this present occasion) seeks first to make an exhaustive inventory of the facts within its field of investigation, and secondly to discover the laws of evolution of those facts. By the principle of evolution we come to see exactly how each fact is related to every other as antecedent or subsequent in the stage of development. Thus a science in its second stage unites facts into a system so that each fact throws light on all other facts in its province and is in turn illuminated by them. Such illumination of one detail by the rest brings out the principle of the whole system. The whole comes to be revealed in each part—not the whole as an aggregate, but the whole as a principle—the spirit that unites the details and makes them into an organism. The difference between an organic being and an inorganic mass is this, according to Kant: "In an organism each part is both means and end to all the others"—each part of the body, like the hand, for example, exists for the sake of all the other parts of the body, and so, too, all the other parts contribute in their turn to its production and sustenance. Science, therefore, ever struggles towards a knowledge of the principle that animates the whole province, thus tending towards that kind of knowledge which we may term philosophical. In its third stage science becomes philosophical in very truth, for it seeks to discover the relation

of each special science to every other. Each science, then, becomes an individual detail employed to throw light on every other science, and, in turn, to receive illumination by the concentrated light of all these others. Philosophy differs from science only by this comprehensiveness; it seeks to show the validity of a first principle of all things, whereas science in its second stage seeks only the principle of its subordinate province and not the supreme principle of the world as a whole. But science in its third stage—comparative science—science that combines one science with another—is not different from philosophy; it is philosophy.

Now the actually working scientific man has to resist the tendency to philosophize. If he wishes to serve the cause of all science he must single out some new province of investigation and proceed to inventory its facts and individual items. He must continually resort to the first stage of scientific work—the stage of mere inventory and verification—Antæus touching the earth, as it were. But confine himself as he may to the mere inventory of his chosen province, he proceeds insensibly into the second stage of scientific thought, and cannot help seeing more and more in each of his facts the light which the other facts throw upon it. Upon completing an exhaustive inventory of the facts in his province each part becomes luminous because it is seen to be organically related to the rest. Goethe symbolizes this result of inductive science by the figure of Homunculus in the second part of his *Faust*. Limited to a small province symbolized by the bottle, the entire province may be exhaustively inventoried and then the facts be organically related so that each is alike means and end for all the rest—a sort of a living organism, as it were—and this living organism is symbolized by Homunculus, who, as Goethe tells us, is continually longing to burst his bottle—that is, he wishes to transcend his narrow province of knowledge and attain to philosophic knowledge that sees one principle in everything.

Now, as said at the beginning, the philosophical view is always the practical one, for it alone sees the bearing of all

the conditioning circumstances. It is only when we act in full view of all the circumstances that we act practically and wisely.

The spirit of the first stage of scientific investigation is opposed to the practical because it devotes itself to inventorying. Wisely to act we must sum up our inventory and assume that all our facts are in—we must close the case without taking further testimony and, in view of what is already known, do our deed.

All considerate action, I repeat it, demands this general survey over the whole inventory and a distinct withdrawal of the mind from the investigation of fresh details. There must be a resolve to stop inventorying and close the case. "In view of what investigation has been completed it seems wise to act thus and so"—and then we *act*.

After the deed is done we open our case again and proceed with our inventorying until it becomes necessary to act again. This is the case in all practical provinces.

In medicine we must try to heal with such remedies as we have discovered, and not wait until we have completed our science of healing. In politics we must act in the light of such parts of history as have been inventoried, and not pause for the whole to be completed. Practical action, the human will, must close its inventory and take its general survey and act on its generalization as if the insight were complete.

It is quite as important that as soon as the necessity for action is past we should again open our investigations and proceed with our inventory. The inventory of the existing details of a province is something that can never be completed. If we delayed all practical action until this is complete we should never act at all.

If we delayed our general survey until the inventory were complete we should never take a general survey. But as practical steps must be taken and deeds be done it is perpetually necessary to introduce the philosophical attitude of mind—that attitude which lets go its hold on some particular detail and removes at a distance so that it takes a general survey of the whole in its proportions.

So long, therefore, as the human will may act, as well as the intellect perceive, there is a necessary province of philosophical activity and no practical man can escape it. If the practical man despises the philosophical aspect his contempt is apt to appear in the one-sidedness and self-contradictory character of his deeds. For his contempt will cause neglect and carelessness in his general survey—he will not sum up the case judicially, but will give undue weight to some items of his inventory.

Thus all persons necessarily have to use the philosophical attitude in passing from theoretical to practical action, and the only question is, How well is it done? The moral quality of deeds, we all know, involves one's theory of the first principle of the universe. And inasmuch as every deed must be considered in its moral aspect before it can be called considerate, we see how completely the philosophic phase of the mind mediates between science and practice.

We must take notice here that this is not a question of specializing or not specializing in our work. The person who confines his attention to the inventorying of some very limited sphere of investigation—say the dative case, or the history of the Juke family, or the course of a particular tornado,—does not specialize his activity any more than the person who devotes his attention to the origin of the moral law, or the ethnical trend of the Anglo-Saxon mind, or the fundamental moving principle in all human history.

In the latter case, the person looks at the general form, and trains his mind to abstract from all other phases of detail. Neglecting content, he looks at form. Neglecting the temporary and local variation, he studies the large variations that fill entire epochs and whole continents.

Now a certain amount of this kind of study is useful to every historian, and essential to historic science as a whole.

We must, of course, take care to remember that the philosophy of history is not a substitute for the labors at inventorying the details of the most circumscribed provinces. Philosophy becomes barren without a continually progressing activity of inventorying. For the philosophic activity

feeds on new surveys. It needs new fields on which to verify and correct its universals. Its principles are what Kant called regulative principles, and they require constant revision in view of the existing state of the actual inventory of all facts and events. They must be brought down to date in the presence of each practical deed to be done.

Applying these general remarks to the subjects of history, allow me to name three or four of the philosophic aspects of history, and indicate briefly their practical bearing on the live questions of to-day.

The first of these aspects is the most general one of all history—the principle of Orientalism as contrasted with the principle of European civilization. In order to seize the principle of a civilization, we must look at its art and literature, and notice the ideals that are held up as objects of desire. We must especially study its religion, and see in what manner it has realized its ideal in its account of the character and actions of its divine beings. We must look into its history of philosophy, and see whether the principle that is revealed in its art, literature, and religion is recognized consciously. Then we must test this principle by applying it to the explanation of the forms of government and its civil organism; and, lastly, test this principle by explaining the historic movements, national collisions, and internal revolutions of the people.

Studied and tested in this way, we cannot fail to observe that the Oriental nations place a very low estimate upon human individuality in comparison with the people of Europe. Selecting the most remarkable purely Oriental people, the East Indians, as the bearers of this spirit opposed to individuality, we find a religion and a philosophy that explain and justify this attitude. They worship a first principle that is so abstract that no predicates except negative ones may be applied to it. Even personality is denied to Brahma. The finite world of imperfection is held by their thinkers to be an illusion, because all that possesses limitation and finitude must be opposed to that abstract divine substance, and therefore cannot possess true being. Hence even conscious-



ness is itself an illusion. Worship must consist in negating individuality. Instead of cultivating the body by gymnastics as the Greeks did, the Hindoo seeks by bodily tortures to reduce his body to a paralyzed condition so that he may no longer feel. The Greeks believed that the first principle of the world is a family of spiritual beings, the gods of Olympus—divine human in their bodies. To worship such divine beings, the Greek strove to make his body graceful and beautiful. The individuality in the Olympian deities furnished the ideal of Greek education, and the youth of Hellas sought to make themselves into living works of art.

Over against the Hindoos and at a lower stage of human development, so far as conscious reason goes, the Chinese nationality is based on the principle of the family. There is one parent for all—the Emperor—intermediate parental heads between the Emperor and the lower ranks. A perfect civil-service system, a method of educating its people on such a plan that the more education the scholar gets the more conservative he becomes—this is one of the most interesting of all devices in the history of education. For the reason that they lack a movable alphabet, but each word is represented by a complex sign of its own, it follows that school learning involves with the Chinese a prodigious exercise of the memory. In learning to read, the boy is committing to memory the maxims of Confucius and Mencius, for his school-books contain such and only such matter as relates to the duties of the child to his elders and rulers. His mind gets full of reverence for authority, and the more learned he becomes the more his mind runs in the channels made by the maxims of the classics of his race. Education in Western Europe and America leads to activity of intellect and the power to think and reflect for one's self. We discourage the exclusive cultivation of the memory, and are always complaining of our schools for what little memory work they retain. The Chinese family government needs conservatism, and it knows how to get what it needs. The family does not permit or encourage the development of individuality, and hence China secures practically what India has done theoretically. The nations of Western Asia,

especially those of the great river valleys and those dwelling near the Mediterranean, have shown the same principle of subordination of individuality, but with very marked efforts to get rid of it altogether. The Egyptians, for example, celebrated individual immortality and symbolized their belief in a divine individuality almost approaching the human type in its character. But the political forms were absolute monarchies, and this indicates the failure to appreciate individuality. The monarch stands for the *Avatara* of the divine principle, and the subjects are slaves who possess no rights. The Persian reaction against the doctrine of the empty absolute of the East Indian people got so far as to set up a dualism of light and darkness—good and evil. But concrete human nature could not be identified with such a divine principle, and therefore the abyss between the common citizen and the king was so broad and deep that compared with European nations there seems little choice between the Persian and the Hindoo. All Orientalism is hostile to the essential characteristics of human personality.

Turning to Europe for the nation that has done most for the substance of human freedom, we single out Rome. The Persian made conquests, but never assimilated a conquered people. The Roman knew how to make over the subdued nations into Romans by his laws. For the Roman had discovered the essential forms of free activity, and articulated them in the form of laws—positive forms for the holding and transfer of property, negative forms to correct trespass and crime. The Roman saw how to return the deed of the individual back upon the doer in a symbolical form, and thus punish the criminal by making him assume the form of freedom—by making him do the deed to himself.

All highest modern European civilization has thoroughly adopted the Roman idea of the union of human wills in contract, and of the sphere of private property in which each citizen, by exercising on it his own preferences, may nurse his individuality. The Roman introduced into the world a sort of double consciousness on the part of each individual—a consciousness of duty to the State on the one

hand, balanced on the other by a sphere of individual freedom in private property. The nations before the Roman had not emerged from the naive form of obedience to custom and habit made sacred by the national religion. The Roman was the first to make the safety of the state the supreme principle, and to make religion a matter of private concern.

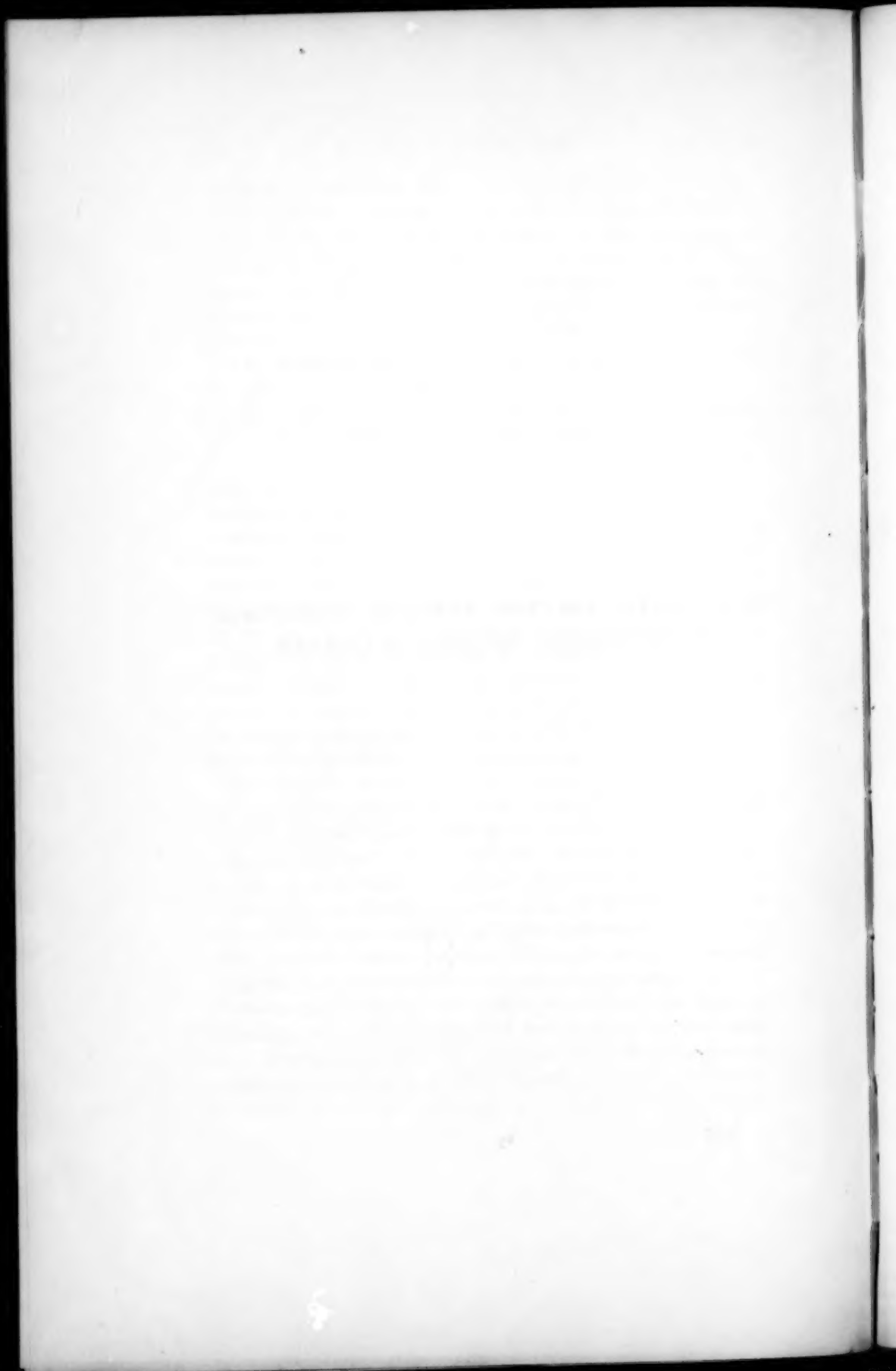
The conflict going on in modern history relates to the adjustment of the Roman idea to the new idea of local self-government developed chiefly by the Anglo-Saxon nationalities. A larger scope for individuality is coming to be realized—more centrifugal force without any loss of centripetal force. The Christian ideal makes an infinite destiny possible for each individual.

Moved onward by this continually goading impulse, the nations of men are inventing institutions which secure more and more self-help. We do not care for the perfectly administered government if its object is not to give to each citizen larger and larger margins of self-activity. The instrumentalities of gun-powder, the printing-press, the steam-engine, electricity, the daily newspaper, the library, the school, the learned society,—these, large and small, whether in the nature of elemental powers or mere devices, all make for the new principle that is now struggling for dominance.

The Roman and Anglo-Saxon nationalities are the two forms most needing attention at present from the student of philosophic history. The Roman centralization and the Anglo-Saxon local self-government—the permanent element in the Roman idea of private property, the permanent element in the Anglo-Saxon let-alone (*laissez-faire*) policy, these are the aspects on which specialization is not only invited, but in a sense compelled by the new problems arising from the phenomenal growth of cities in our time.

These illustrations must suffice to indicate the lines of investigation which comparative history takes up, and they show how practical are the questions involved in adjusting ourselves to the trend of our civilization.

BRIEF NOTES ON THE PRESENT CONDITION  
OF HISTORICAL STUDIES IN CANADA





## BRIEF NOTES ON THE PRESENT CONDITION OF HISTORICAL STUDIES IN CANADA.

By GEORGE STEWART, D.C.L., LL.D., D.Litt., F.R.G.S., F.R.S.C., President Literary and Historical Society, Quebec.

Considerable activity has been shown during the year 1890 in the study and investigation of historical truths in Canada. Several important books have been published, notably the fourth volume of Dr. Wm. Kingsford's "History of Canada, 1756-1763," with maps. Mr. James Hannay, of St. John, N. B., has completed a history of the war of 1812, and Dr. J. G. Bourinot, C.M.G., is employed in writing a work on the siege and old forts of Louisbourg. Dr. Abbé Casgrain continues his researches in Acadia, and Mr. James Stevenson, an ex-President of the Literary and Historical Society of Quebec, is gathering materials for an exhaustive paper on early colonial paper money, army notes, etc. The Literary and Historical Society of Quebec has sent on loan to the Naval Exhibition, which takes place in May, 1891, in England—the model of the *Royal William*, the first steamer to cross the Atlantic by steam alone. The *Royal William* was built in Quebec City, and the model was presented to the Society many years ago. All the historical societies of Canada have done good work during the year, and a number of valuable papers have been read in each. Most of these have been published in the Transactions and Proceedings of the several bodies. The principal historical societies in Canada are the Royal Society, the Literary and Historical Society of Quebec, the Historical Society of Nova Scotia, the Historical Society of New Brunswick, the Historical Society of Manitoba, the Society of Canadian Literature of Montreal,

Société Historique of Montreal, Numismatic and Antiquarian Society of Montreal, Society of Historical Studies of Montreal, Cercle Littéraire Français of Montreal, Institut Canadien of Quebec, Canadian Institute of Toronto, Literary and Scientific Society of Ottawa, Institut Canadien-Français of Ottawa, Hamilton Association of Hamilton, Ontario, Wentworth Historical Society of Hamilton, Ontario.

The prevalence of la grippe during the winter months of 1890 prevented the Literary and Historical Society from holding its regular course of lectures during the year. The course of 1890-91 includes a paper on Oliver Wendell Holmes, by the President, Dr. George Stewart; the English Cathedral of Quebec, by Frederick C. Würtele; Novels, by William C. H. Wood; the *Royal William*, by Archibald Campbell; and Labrador, and some notes on the projected Labrador railway, by W. A. Ashe, F.R.A.S. The volume of Transactions to be published in 1891 by the Society will include most of the above papers, together with one or two manuscripts belonging to the valuable collection in the archives of the Society.

There were read before the Royal Society, in 1890, the following papers in Section 1:

1. La femme dans la Société Moderne, par Napoléon Legendre.
2. Réalistes et décadents, par Napoléon Legendre.
3. Coup d'œil sur notre Littérature Nationale (française Canadienne), par Napoléon Legendre.
4. Le Poète, poésie, par Napoléon Legendre.
5. Noël, poésie, par Napoléon Legendre.
6. Chez Victor Hugo, par Louis H. Frechette.
7. Trois Mois à Paris il y a quarante ans, par l'hon. F. G. Marchand, M.P.P.
8. Nos gros chagrins et nos petites misères, par l'hon. F. G. Marchand, M.P.P.
9. Trente Années de recherches dans nos archives, par Mgr. Tanguay.
10. Vicissitudes de la législation Anglaise depuis Elizabeth jusqu' à Victoria, par Alphonse Lusignan.

11. Étude sur les *Blue Laws* de la Nouvelle-Angleterre, par Faucher de Saint-Maurice.

12. Sous les bois, par Pamphile Le May, D.Litt.

13. M. de Callières, par Benjamin Sulte.

14. A travers la Vie, par Joseph Marmette.

15. Les Scandinaves en Amérique, par Alphonse Gagnon, présenté par l'Abbé H. R. Casgrain, D.D., D.Litt.

16. James Murray, le Premier Gouverneur Anglais de Quebec, 1759-1767, par J. M. LeMoine.

17. Les Points obscurs des Voyages de Jacques Cartier, par Paul de Cazes.

18. Vocabulaire d'homonymes de la langue Française, par Charles Baillairgé, M.A.

19. Étude Grammaticale de la langue Algonquine, par l'Abbé Cuoq, D.D.

20. Notes sur différents points de Notre histoire, par l'Abbé Verreau.

In Section 2 :

1. Canadian Studies in Comparative Politics (1) Canada and England; (2) Canada and the United States; (3) Canada and Switzerland. By J. George Bourinot, C.M.G., LL.D., D.C.L.

2. The American Bison—its habits, methods of capture, and economic use in the Northwest, with reference to its threatened extinction and possible preservation, by Charles Mair.

3. The Vinland of the Northmen, by Sir Daniel Wilson, F.R.S.E., LL.D.

4. The Early Portuguese Explorations on the Northeast Coast of America, and the first European attempt at colonization there, by the Rev. George Patterson, LL.D., D.D.

The Royal Society will meet, for the first time in its history, in Montreal in May, 1891.

The government of Quebec has published vol. vi. of "Jugements et Délibérations du Conseil Souverain de la Nouvelle France," 7 Janvier, 1710,–22 Décembre, 1716. 1276 pp.

The government of Canada has published the "Statistical Year-Book of Canada for 1889"—fifth year of issue.

Mr. Douglas Brymner, Archivist, of Ottawa, has published his report on the Canadian archives for 1890. It contains :

Note. A. Administration of Justice.

" B. Constitutional Act of 1791.

" C. Northwestern Exploration.

" D. Internal Communication in Canada.

" E. Relations with the United States after the Peace of 1783.

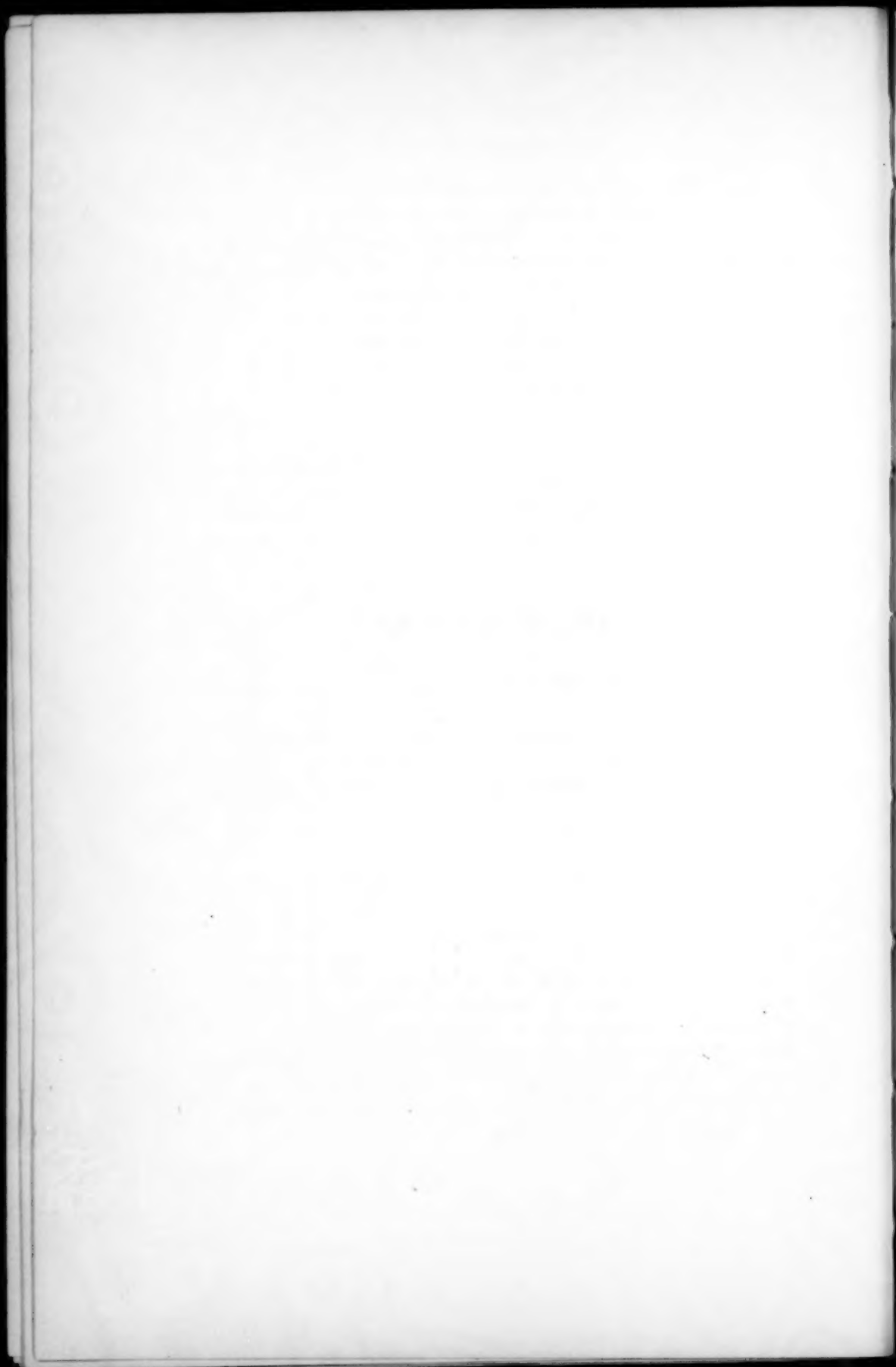
State Papers, Calendar, 1761-1800. Map of the Northwest, by Peter Pond.

Messrs. Joseph Pope, of Ottawa, and Hiram B. Stephens, B.C.L., of Montreal, have published their prize essays on Jacques Cartier and his four voyages to Canada. Four medals, two silver and two bronze, were offered by the Hon. A. R. Angers, LL.D., Lieutenant-Governor of Quebec, for the best two essays on Jacques Cartier and his times, in the English and the French languages. The judges appointed by His Honor were Dr. J. C. Taché, Ottawa; Dr. George Stewart, F.R.G.S., Quebec; J. M. LeMoine, Esq., F.R.S.C., Quebec; and Stewart Thayne, Esq., of Ottawa.

The medals were awarded to Joseph Pope, Civil Service, Ottawa; Dr. N. E. Dionne, Quebec; Hiram B. Stephens, Montreal; and Toüon de Longrais, Rennes, France.

IS HISTORY A SCIENCE?





## IS HISTORY A SCIENCE?

By Prof. R. H. DABNEY, University of Virginia, Va.

A gentleman well known for his historical writings, who has in a former year held the presidency of this association, Dr. Charles Kendall Adams, of Cornell University, has declared in his "Manual of Historical Literature" that there is "no well-grounded promise . . . of a science of history." Not only, therefore, does he negative the question: "Is history a science?" but he even denies the hope of its becoming one. It is my purpose to maintain the affirmative side of the question; and yet, as President Adams speaks on another page of the "rigorous laws that have shaped the destinies of nations," and asserts the "great truth that the history of civilization is one continuous story of development," it may be that after all our difference is only a verbal one. Most disputes are about words, and perhaps the present controversy is simply one concerning the meaning of the word "science." Before attempting, therefore, to prove that history is a science, I must say what a science is.

In the first place I utterly repudiate the too frequent misuse of the word to designate only those branches of knowledge that treat of the material world. The distinction between literature and science is false and misleading, if taken to mean that scientific works are always without literary skill and literary works without scientific accuracy. A work on astronomy may be written with artistic literary skill, while another on English poetry may be written in the dreariest of styles. There is no necessary antagonism between the artistic and the scientific methods. Historical

subjects may or may not be investigated scientifically, and may or may not be presented in artistic form. Macaulay's "History of England" is literary without being too scientific; Stubbs's "Constitutional History" is scientific, although the Bishop's warmest admirer would not assert that it was artistic; while Lecky's "History of Rationalism" is artistic as well as scientific. A science, in the proper sense of the term, is a body of systematized or classified knowledge, whether it be knowledge of dead or living matter, of language, of numbers, of angles and curves, or of human thoughts and actions. If the knowledge of any subject whatever be sufficiently systematized, if the causal nexus of the facts composing it be sufficiently clear, it is a science. A mere jumble of empirical facts, no matter how numerous, is not a science, though out of the chaos a science may ultimately arise. Astrology was a mixture of superstition and superficially observed facts, but out of it has arisen the science of astronomy. The delusions of alchemy, too, have given way to the facts of chemical science. History, also, was once largely a tissue of fantastic or poetic fables, or else a series of dry, disjointed annals; but all will agree that the present century has wrought a great change in this respect.

"Science" is a relative term, there being no absolutely perfect science, not even mathematics. And yet, while opinions may differ considerably as to the exact degree of precision necessary to constitute a science, the number of persons is growing who consider history entitled to the name. Every one admits that astronomy is a science, that is, that the immense mass of facts known concerning the heavenly bodies are no longer chaotic and disconnected, but have been systematized and reduced to law and order. As nearly as the slight imperfection of his instruments will permit, the astronomer can predict with confidence almost the exact spot that will be occupied by any one of the planets years from now. All astronomers are agreed that the motions of the heavenly bodies are governed by an all-pervading force called gravity, and that this force acts ac-

cording to fixed and unchanging laws. Is historical science as exact as astronomical? Are there any historical laws as clear-cut, as simple, and as easy of demonstration as Kepler's laws of planetary motion? By no means. And yet to acknowledge this is very different from confessing that the phrase "historical science" has no right to exist. "Science," I repeat, is a relative term. Even Kepler's laws are but approximately true, and would not even be that, but for the fact that the mass of the sun is far greater than that of all the planets combined. To make astronomy absolutely perfect, it would be necessary, in calculating the motions of the earth, to determine the attraction upon it of not only the sun and every planet, planetoid, and satellite, but of every so-called fixed star, every comet, every nebula, and, indeed, of every atom of matter in the universe. For gravitation is declared to be universal.

Meteorology, like history, is far less exact than astronomy, and yet is called a science. Definite principles and methods give it a scientific basis, and the weather may be predicted with considerable certainty for twenty-four hours. If his science were perfect, the meteorologist could predict not merely hot and cold waves, not merely rain and drought, not merely the hurricane and the cyclone, but also the exact motion of every aspen leaf swayed by the breath of a zephyr. This is, of course, impossible, and yet meteorology is a science. To make history a perfect science, it would be necessary to take into account all the deeds and thoughts of every human being. But, although this cannot be done, I hold that history is a science of increasing precision. It is a science, moreover, the methods of which are being applied more and more to other sciences of widely different nature. Not only the political economist now uses the historical method, but the geologist traces the history of the Earth's strata in past time. The labor of the biologist no longer consists merely in loosely describing animals and plants, and in labelling them with Latin names. He, too, treats his subject historically; the history of each plant being traced from its birth in the seed through every stage

till it reaches maturity, withers and dies; the history of each animal from the embryonic to the adult form. At no time have history and its methods been so important as now, and it will therefore repay us to consider some of the grounds for giving it the honorable name of science.

To begin with, a far stricter and more critical spirit has been carried, in this century, into the investigation of the mere facts of history. Delusions long cherished have been exploded, and the ground has been cleared of much obstructing rubbish. Such historians as Ranke have insisted upon the careful and conscientious study of the original sources for the history of any period; and thus better and more bricks than ever before have been collected for building the edifice of historical science. Nor is this all. With better bricks, better cement has also been used, and the style of architecture has become more massive and imposing. No mere narration of events can now rank with historical works of the first order. The scientific historian must not only narrate events, but must point out their mutual relations, their causes and their effects. More and more it becomes clear that history is not a chaos of disconnected facts and dates, but a continuous, unbroken stream, having its sources in the far-off past, its outlet in the ocean of the future.

It is difficult to grasp and hold firmly this conception of necessary connection, this idea of resistless law, in human events. Like most other valuable acquisitions, it can usually be acquired only by long and patient work. But it will, perhaps, be possible, nevertheless, to convey some general idea of my meaning.

It is evident that, since the deeds of a nation, which make up its history, are the result of the interaction and combination of the deeds of its individual members, the question whether the history of a nation is governed by laws may be reduced to the question whether the acts of each individual are governed by such laws. Let us then consider the individual. Are his actions utterly capricious, entirely free from control, or are they the necessary results of antecedent causes.



It is not my intention to discuss the metaphysics or theology of the question of free-will and necessity. I confess my complete ignorance of the ultimate and absolute nature of both mind and matter *per se*. It is of what philosophers call the *phenomena* of will alone that I shall speak. Are the phenomena called acts of will, or volitions, caused or uncaused? This question belongs just as truly to exact science (and therefore not to metaphysics) as the question whether the motion of a cannon-ball is caused or uncaused. It would be an entirely different matter to discuss what motion is *per se*: of that I know nothing. The phenomenon motion and the phenomenon volition are what we are concerned with. Is the latter caused, as the former is, or is it uncaused?

Now, to those who are accustomed to abstract reasoning, it is unnecessary to put such a question. For, such persons regard it as axiomatic that every event, without any exception, has a cause, and must therefore acknowledge that there is law in psychology and in history. As few men, however, can sufficiently dispel the mists of prejudice to see the truth of an abstract proposition which they regard as obnoxious, let us take a concrete example.

An infant, when given a bottle of milk, begins to suck. It chooses or wills to do so, if you please. Now, the question is this: is this act of will caused or uncaused? Does the infant choose to suck for no reason whatever, or does it do so *because* of that physical sensation, totally beyond the domain of its will, which we call hunger? Suppose no one to be in the room but the nurse and the child; suppose there is no loud sound, no bright light, no unusual circumstance whatever to divert the child's attention; and suppose, finally, that the child has a good healthy appetite. With these *data*, can we or can we not *predict* that the child, when offered the bottle, will choose to suck? Is the certainty that it will do so much less absolute than that some chemical experiment will result as the chemist predicts? Can the child will not to be hungry? Or is the sensation of hunger a manifestation of physiological laws over which the child has no control? Can we predict the child's action under the given circumstances?

Again—suppose this same child to be placed, after reaching the age of ten, in exactly the same circumstances as before. What will he choose to do this time? Why is it that we can predict so confidently that his action will now be the opposite of that in his babyhood? Is his present choice, or volition, different from his former one for no reason whatever? Or have new causes come into play?

And again—suppose this same boy of ten (an average boy, with no marked eccentricities) to be alone, with nothing to do, on a holiday; and suppose that some other boys come and propose that they should all drown a cat or tie pop-crackers to a dog's tail. Who doubts that he will accept their invitation? But wait till he is twenty years old; and it is equally certain that he will prefer to play foot-ball, or billiards, or whist, or something else, according to his taste. At forty it is hardly probable that foot-ball will be his favorite pursuit; while, at eighty, his mode of life will have still more radically changed. A few years more, and his willing and choosing are over forever.

Now, this enumeration of such truisms as the above may appear trivial and tedious; but it is just such simple facts as these, that, rightly interpreted, form the materials for the edifice of science. Long ago, substantially these same facts were deemed not unworthy of being framed in deathless verse and put into the mouth of the melancholy Jaques by the greatest of poets. The bard of Avon, with the inspiration of genius, expressed a great scientific truth in poetic language when he declared that

“ All the world 's a stage,  
And all the men and women merely players :  
They have their exits and their entrances ;  
And one man in his time plays many parts,  
His acts being seven ages. At first, the infant,  
Mewling and puking in the nurse's arms :  
Then the whining school-boy, with his satchel,  
And shining morning face, creeping like snail  
Unwillingly to school : and then, the lover,  
Sighing like furnace, with a woeful ballad  
Made to his mistress' eyebrow. Then, a soldier ;  
Full of strange oaths, and bearded like the pard,

Jealous in honour, sudden and quick in quarrel,  
 Seeking the bubble reputation  
 E'en in the cannon's mouth. And then, the justice  
 In fair round belly with good capon lined,  
 With eyes severe, and beard of formal cut,  
 Full of wise saws and modern instances ;  
 And so he plays his part. The sixth age shifts  
 Into the lean and slippered pantaloons ;  
 With spectacles on nose and pouch on side ;  
 His youthful hose, well saved, a world too wide  
 For his shrunk shank ; and his big manly voice,  
 Turning again toward childish treble, pipes  
 And whistles in his sound. Last scene of all,  
 That ends this strange eventful history,  
 Is second childishness and mere oblivion ;  
 Sans teeth, sans eyes, sans taste, sans everything."

Now, why is it that the infant mewls and pukes? Why is it that the portly justice lines his ribs with capon instead of penning woeful ballads? Why does the soldier seek the bubble reputation instead of whining like a school-boy? To say that all these acts are free from the control of causation is to juggle with words. Nor would it avail to confess, indeed, that the acts are caused, but to assert that their causes are in the mind itself, and that therefore they are independent of everything external to the mind. For, granting that the immediate cause of volition is in the mind, we are still confronted with the fact that this immediate cause is at the same time an effect of another and mediate cause,—but a single link in a long chain of causes.

Once more I disclaim all intention of discussing the metaphysical side of the question. I am discussing phenomena ; and am endeavoring to show that the phenomena of will are subject to the dominion of law, just as truly as the phenomena of astronomy, and that many of them may be predicted. That such is not the case with them all, no more proves that any of them are beyond the domain of law, than the inability to calculate the effect of the moon's attraction upon a feather floating in the air, disproves the universality of gravitation. There are laws in the realm of mind as all-embracing as gravitation in that of matter. For example, this: Every man that is not prematurely cut off, passes in-

evitably, whether he choose or not, through the stages of infancy, boyhood, youth, manhood, old age. Each of these periods is marked by different tastes, different ideals, different hopes, different fears. And all these things are totally beyond his control. No mortal has ever been able, by the exercise of his will, to change his age with its accompanying characteristics. "Time and tide wait for no man." The age of sugar-rags and rattles and dolls comes but once in a man's lifetime; and comes, not when he wills it, but at a time fixed by causes beyond his control.

Now, as with individual, so with national life. Each nation, like each man, lives a continuous life—a life continuing from the cradle to the grave, and marked by different characteristics at each different age. Nations, like men, vary widely both in natural genius and in opportunities for development. Some nations are precocious, quick, brilliant, energetic; other nations are slow, sluggish, lazy, dull. Some nations may be cut off in their prime, while others may live to a hoary old age. But every nation lives a continuous life with an individuality of its own. Nations, like individuals, may be educated by others. This education may be good or bad, may dwarf or expand the nation's innate powers. It can neither radically change these powers nor create new ones. From an acorn only an oak can come. Whether cast upon stony ground, or planted in the richest soil, it can bring forth only an oak—a puny sapling or a monarch of the forest, according to circumstances, yet always an oak. Each nation's history is determined inevitably by two things—its own inborn character, and the totality of circumstances in which it is placed. By those to whose minds the processes of deductive reasoning fail to bring conviction of this truth, the inductive proofs must be sought in the pages of history itself. The subject is far too vast for the limits of this paper; but, before closing, I will touch briefly upon one objection to the doctrine that history is a science.

I refer to the opinion that individual men of genius may, and frequently do, totally change the whole course of human

events. And, if this be true, (it is alleged) there can be no science of history. To speak of historical laws (it is said) that may be turned topsy-turvy by a Cæsar or a Napoleon, is absurd. Now, in the first place, men of genius produce a much smaller permanent effect than is popularly supposed. Even Mommsen admits that the Roman civil war was fought not to decide whether republic or monarchy was to be the form of government—for that had been settled already—but whether Cæsar or Pompey was to be the first monarch. Cæsar did not destroy the republic. It had already rotted of itself.

It is perfectly true, however, that at certain critical junctures of history men of genius do exercise a great and far-reaching influence upon subsequent events. An illustration will best show the nature and limits of this influence. Each day, as the vestibuled train from Cincinnati comes rolling over the C. & O. road into Charlottesville, Virginia, its head is pointed towards Richmond. But suddenly, upon reaching the V. M. junction, it wheels to the left, and, after a stop, rushes on to Washington and New York. A switchman, at the decisive moment, has deflected the rails—only an inch or two, and yet enough to send the train hundreds of miles from Richmond towards which it had been moving. Now, a shallow thinker might say that in this case a very small cause has produced a gigantic effect, that the mere muscular force of the switchman's arm has propelled the train hundreds of miles. He would confound an occasion with a cause. The cause of the train's motion is the steam-power. No law of nature has been violated. Force has been expended, just as if the train had gone to Richmond. Only the direction has been changed, while the train remains a train. Or, take another illustration. You have all heard of that part of New York harbor called Hell-Gate, a narrow part of the river where the water flowed over rocks dangerously near the surface. You have heard, too, that tunnels were dug beneath the river's bed and charged with dynamite. And when all was ready, a little child, the daughter of the chief engineer, touched an electric button, and in-



stantly several acres of the river rose high in the air. Was a law of nature violated here? Did the pressure of the child's finger lift the river from its bed? Did this event annihilate the claims of chemistry to be called a science? Or did not the pressure of the little finger merely give an opportunity for the potential chemical energy stored up in the dynamite to become kinetic energy *in accordance with* chemical laws?

Great geniuses like Napoleon may, indeed, turn the vast energy of a nation in revolution into a particular channel: they cannot create that energy or change the laws of its action. Had Bonaparte fallen on the bridge at Lodi, the subsequent fortunes of France and of Europe would surely have been different in many particulars from what they have actually been. Napoleon was the switchman who, standing upon the great track of French history, deflected the rails, and sent the fiery nation upon the road to military renown. And yet no law of nature was violated. The French remain the French; there is law in history; and history is a science.



CANADA AND THE UNITED STATES: AN HIS-  
TORICAL RETROSPECT.



## CANADA AND THE UNITED STATES: AN HISTORICAL RETROSPECT.

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When we review the past history of America, we can well believe that there has been a destiny ever "shaping the ends" of the Canadian communities, however diplomatists and statesmen have endeavored "to rough-hew them" in the early times of their development. In the beginning of the seventeenth century, England and France entered on that contest for the supremacy in America which did not end for a hundred and fifty years. The ruins of an old church tower, covered by ivy, and some gray tombstones, are the only remains of the first permanent English settlement made in Virginia, on the banks of the James River, by a few adventurous Englishmen; but the picturesque heights of Quebec, with its imposing citadel and ancient walls, its time-worn convents and churches, its curious climbing streets, and its French people, still recall the story of the bold Frenchmen who landed there one year after the English founded Jamestown. Then came the settlement of Massachusetts by the sturdy, self-reliant, narrow-minded Puritans, who have moulded the thought and stimulated the action of the old Eastern and Western States, and practically laid the foundation of the free institutions of America. The English colonies, possessing representative institutions, left to manage their internal affairs with little or no interference on the part of the parent state, were in a position to attain a degree of prosperity which the French-Canadian settlements on the banks of the St. Lawrence, governed like a province of France, having not even a semblance of local government,

allowed no opportunities for commercial development, were never able to show during their interesting and picturesque history as a French colony. When the Treaty of Paris was signed in 1763, the results of French ambition in America were to be seen in a poor struggling colony on the banks of the St. Lawrence, and in a few settlements on the Illinois and in the Mississippi valley. The total population of all these settlements did not exceed eighty thousand souls, of whom seventy thousand were living in the St. Lawrence valley.<sup>1</sup> The ambition of France had aimed at the acquisition of a continent during the memorable years of her occupation of Canada. Until the year of her defeat, her flag was floating on a series of forts and settlements stretching from Louisbourg on the Atlantic Coast, through the St. Lawrence and the Great Lakes, and through the valleys of the Ohio and the Mississippi, as far as New Orleans on the Gulf of Mexico. The British colonies were confined to a narrow strip of territory extending from the St. Croix to the Susquehannah, and confined between the Atlantic Ocean and the Appalachian Mountains, which barred their progress to the West. Even then the population of the Thirteen Colonies had reached one million, one hundred and sixty thousand souls, or nearly fifteen times the French population of the St. Lawrence and Mississippi basins.<sup>2</sup> In wealth there was no comparison whatever between the two populations. The people of the English colonies were full of commercial energy and the spirit of political freedom. The people of the French province were the mere creatures of a king's ambition, and their energies were chiefly devoted to exploration and the fur trade. The history of French Canada has picturesque aspects which are wanting in that of the more sturdy, self-reliant English colonists. The spirit of adventure which distinguished the French above the English colonists, first gave to the world the knowledge of the Great West, and of that wondrous valley through which the Mississippi

<sup>1</sup> See Hinsdale, "The Old Northwest; with a View of the Thirteen Colonies as Constituted by the Royal Charters," pp. 47, 48, 68, 69.

<sup>2</sup> Hinsdale, "The Old Northwest," p. 69.

with its many affluents makes its way to the southern gulf. It was inevitable, however, that this courageous and patient people, wanting that independence of mind which is the logical sequence of English self-government, should fail at last in the scheme of conquest which France hoped by their aid to accomplish on this continent. The conflict that was fought in America for a century and more was a conflict of antagonistic principles—the principle of self-government and freedom of thought, against the principle of centralization and the repression of political liberty. Freedom won on the Plains of Abraham, and a great Frenchman and a great Englishman consecrated by their deaths on the same battlefield the future political union of two races on the northern half of the continent. Of the great events of history that have moulded the destinies of peoples, none has had more momentous consequences than the conquest of Canada one hundred and thirty years ago.<sup>1</sup> One consequence has been the development of a powerful federal republic now composed of sixty-two millions of people—the heirs of those free colonies which were founded by Englishmen and flourished under the influence of English principles of government. The second consequence has been the establishment of a federation known as the Dominion of Canada, possessing political institutions which give remarkable scope to individual energies, and enable the French Canadians themselves even now to look forward to the realization of those dreams of ambition which were the incentive to action of many noble men in those brave old days when France held the St. Lawrence and the illimitable region of the West. But this grand conception of an empire is in course of realization, not under the influence of French principles

<sup>1</sup> "With the triumph of Wolfe on the Heights of Abraham began the history of the United States. By removing an enemy whose dread had knit the colonists to the mother country, and by breaking through the line with which France had barred them from the basin of the Mississippi, Pitt laid the foundation of the Great Republic of the West."—Green, "History of the English People," iv., 194. See also Bancroft, "History of the United States," ii., 537; Bourinot, "Canadian Studies in Comparative Politics (Canada and the United States)," p. 39.

of government, but under the inspiration of those English institutions which, the experience of centuries proves, are best calculated to develop political freedom, individual energy, and the finest qualities of human endeavor.

The conquest of Canada removed that fear of France which had long confined the old Thirteen Colonies to the country between the sea and the Alleghanies, and opened at last to their adventurous sons that great West which in later times has had such wondrous effects on the commerce of America. The Treaty of Paris in 1763 was the end of French dominion on this continent. It was immediately followed by a proclamation from George III., establishing new governments in America as a result of the English acquisitions from France and Spain. East and West Florida were formed out of the Spanish possessions to the south of the Thirteen Colonies, and the old French colony was confined practically to the St. Lawrence, and was to be thereafter known as the government of Quebec. The English possessions now reached the east bank of the Mississippi River, while Spain held the great country to the west of that river known as Louisiana. The claims of the Thirteen Colonies to the country between the Alleghanies and the Mississippi were not recognized by the British government. On the contrary, settlement was discouraged in that rich region, and there is every reason for the opinion that the English ministry of that day had determined to retain its control in their own hands and not to give new opportunities for the expansion of the old colonies, whose restlessness and impatience of all imperial restraint were becoming quite obvious to English statesmen.<sup>1</sup> But events, as usual, moved faster than the logic of statesmen. The war of American independence broke out as a result of the practical freedom enjoyed by the colonies for a hundred years and more. The self-assertion of the Thirteen Colonies had its immediate results on the fortunes of Canada, for

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<sup>1</sup> See the report of the Lords Commissioners for Trade and Plantations, drawn by Lord Hillsborough, with respect to inland or western settlement. Hinsdale, "The Old Northwest," p. 134.



among the acts passed by the imperial government, in accordance with a new and vigorous policy of colonial government, was the statute known as the Quebec Act of 1774, which extended the limits of the province of Quebec so as to include the country long known as the old Northwest. This act was obviously intended—indeed, it appears to have been a sequence of the policy of 1763—to confine the old English colonies to the country on the Atlantic coast, and to conciliate “the new subjects” of England, the French population of the St. Lawrence and of the Northwest, since it established a larger province with the civil law of the French *régime*, and removed the political disabilities under which the Roman Catholics had labored since the conquest of Canada.<sup>1</sup> The passage of the Quebec Act was believed to be just as hostile a message to the English population of the Thirteen Colonies as it was a charter of the political and religious freedom of the French of Canada. The Congress of the rebellious colonies inveighed against it in bitter terms as “unjust, unconstitutional, and most dangerous and destructive to American rights.” Few acts of the imperial government have been of more vital consequence to the destinies of a community than the Stamp Act, which gave the first stimulus to the spirit of independence which, in the nature of things, was ready to break forth in the old English colonies on the slightest provocation, or the Quebec Act, which virtually established on the banks of the St. Lawrence the language, religion, and law of Rome.<sup>2</sup> During the war of independence impassioned appeals were made to the French of Canada to join the Thirteen Colonies against England, and with a curious ignorance of the conditions of a people who probably never saw a printed book, and who never owned a printing-press during the French *régime*, references were made to the writings of Beccaria and to the spirit of the “immortal Montesquieu.” With the

<sup>1</sup> Bancroft, “History of the United States,” iv., 79, 80.

<sup>2</sup> See Christie, “History of Lower Canada,” i., 17-25. “The proclamation,” says the author, “fell to the ground, still-born as it were, not one *habitant* of a thousand ever having heard of it.”

same remarkable fatuity that has often prevented the people of the United States in these later days from understanding the feelings of Canadians, their predecessors in those early times attacked the Quebec Act as a measure of Roman Catholic tyranny at the very time they were asking the assistance of the French Canadians.<sup>1</sup> Canada was invaded, and when Montgomery fell at Quebec the tide of invasion was forced back into the rebellious colonies. The mass of the French Canadian people no doubt looked with the most perfect indifference on the struggle between England and her former subjects, and here and there were found a few men, English as well as French, quite ready to welcome and assist the invaders should success accompany them in their progress through Canada; but the influence of the Quebec Act was felt from the outset, and the dominant classes, the bishops and clergy of the Roman Catholic Church, and the principal French Canadian *seigneurs*, combined to preserve Canada to a country which had given such strong guarantees for the preservation of the civil and religious rights of its new subjects.

The period from 1774 to 1800 was one of great moment to Canada and the revolted colonies. The treaty of 1783, which acknowledged the independence of the latter, fixed the boundaries of the two countries, and laid the foundation of fruitful controversies in later times. Three of the ablest men the United States can claim as its sons—Franklin, John Adams, and John Jay—succeeded, by their astuteness and persistency, in extending its limits to the eastern bank of the Mississippi despite the insidious

<sup>1</sup> See "Address to the People of Great Britain," dated at Philadelphia, Sept. 5, 1774, in which the delegates of the colonies expressed their astonishment that "a British parliament should ever consent to establish in that country [Canada] a religion that had deluged your island in blood, and dispersed impiety, bigotry, persecution, murder, and rebellion through every part of the world." On Oct. 26, 1774, seven weeks later, the general congress ignored the foregoing address and issued the appeal to the Canadians mentioned in the text. The time was too short to convince the Quebec clergy of a change of sentiment with respect to the Roman Catholic religion. See Christie, "History of Lower Canada," i., 8, 17; Bancroft, "History of the United States," iv., 81.

efforts of Vergennes, on the part of France, to hem in the new nation between the Atlantic and the Appalachian range.<sup>1</sup> The relatively little interest that was taken in Canada during the preliminary negotiations may be easily deduced from the fact that Oswald, the English plenipotentiary, was even ready to listen to the audacious proposition made by Franklin for the cession of Canada to the new federal republic — a proposition which has apparently moulded the policy of the United States ever since. It is said of Oswald that, when he returned to England with the draft treaty and was questioned by London merchants on the subject, he confessed his ignorance and wept over his own simplicity. "The truth is," said Dr. Franklin in a letter from Paris, "he (Oswald) appears so good and honorable a man that, though I have no objection to Mr. Grenville, I should be loath to lose Mr. Oswald."<sup>2</sup> Well might the astute Franklin be "loath to lose" an envoy who conceded not only the territory west of the Alleghanies as far as the Mississippi, and valuable fishing rights and liberties on the banks and coasts of the remaining English possessions in North America, but also showed his ignorance of English interests by establishing boundaries which, in later times, made Canadians weep tears of humiliation.<sup>3</sup>

The United States now controlled the territory extending in the east from Nova Scotia (which then included New Brunswick) to the head of the Lake of the Woods and to the Mississippi River in the west, and in the north from Canada to the Floridas in the south, the latter having again become Spanish possessions. The boundary between Nova Scotia and the Republic was so ill-defined that it took half

<sup>1</sup> See "John Jay" (American Statesmen Series). By George Pellet, pp. 184-188. Also, Hinsdale, "The Old Northwest," pp. 177, 181.

<sup>2</sup> See "Compressed View of the Points to be Discussed in Treating with the United States," London, 1814. Also, "Letters to the Rt. Hon. E. G. S. Stanley, M. P., upon the Existing Treaties with France and America." By Geo. R. Young, London, 1834.

<sup>3</sup> The definitive treaty of peace between England and the United States was signed September 3, 1783, and contained all the provisional articles, negotiated principally by Oswald with the American Commissioners.

a century to fix the St. Croix and the Highlands which were by the treaty to divide the two countries. In the far West the line of division was to be drawn through the Lake of the Woods "to the most northwestern point thereof, and from thence on a due west course to the river Mississippi"—a physical impossibility since the head of the Mississippi, as it was afterwards found, was a hundred miles or so to the south. In later times this geographical error was corrected and the curious distortion of the boundary line, that now appears on the maps, was necessary at the Lake of the Woods in order to strike the forty-ninth parallel of north latitude which was subsequently arranged as the boundary line as far as the Rocky Mountains. Of the difficulties that arose from the eastern boundary line I shall speak later.

With the acquisition of a vast territory, acquired by the earnest diplomacy of its own statesmen, the United States entered on that career of national development which has attained such remarkable results within a century. The population of the country commenced to flow into the West, and the famous ordinance of 1787 was passed by Congress, providing for the organization of the western territories, and the eventual establishment of new states of the Union. By 1800 the total population of the United States was over five millions of souls, of whom over fifty thousand were already dwelling in the embryo States of Ohio, Indiana, Illinois, Michigan, and Wisconsin—the "old Northwest." By 1800 a great change, too, had taken place in the material and political conditions of British North America. One of the most important results of the war of independence had been the migration into the provinces of some forty thousand people, known as United Empire Loyalists, on account of their having remained faithful to the British Empire, and who during the progress of the war, but chiefly at its close, left their old homes in the thirteen colonies. When the treaty of 1783 was under consideration the British representatives made an effort to obtain some practical consideration from the new nation for the claims of

this unfortunate people, who had been subject to so much loss and obloquy during the war. All that the English envoys could obtain was the insertion of a clause in the treaty to the effect that Congress would recommend to the legislatures of the several States measures of restitution—a provision which turned out, as Franklin intimated at the time, a perfect nullity.<sup>1</sup> The English government subsequently indemnified these people in a measure for their self-sacrifice, and among other things gave a large number of them valuable tracts of land in the provinces of British North America. Many of them settled in Nova Scotia, others founded New Brunswick, and Upper Canada, now Ontario. Their influence on the political fortunes of Canada has been necessarily very considerable. For years they and their children were animated by a feeling of bitter animosity against the United States, the effects of which can still be traced in these later times when questions of difference have arisen between England and her former colonies. They have proved with the French Canadians a barrier to the growth of any annexation party in times of a national crisis, and have been in their way as powerful an influence in national and social life as the Puritan element itself in the Eastern and Western States.

In 1792 the imperial parliament again intervened in Canadian affairs, and formed two provinces out of the old province of Quebec, known until 1867 as Upper Canada and Lower Canada, and gave to each a legislature composed of two Houses. This was a momentous change in the political position of the country, for it virtually separated the English and French into two sections and increased the facilities previously given by the Quebec Act, for the conservation and perpetuation of the special institutions of French Canada. The English-speaking people of the old province of Quebec strongly protested against the change, but the younger Pitt, then at the head of affairs in England, deemed it the wisest policy to separate as far as practicable the two nationalities

<sup>1</sup> "Narrative and Critical History of America," edited by Justin Winsor, vii., 205.



instead of continuing their political union and making an effort to bring about an assimilation of language and institutions. It was a policy intended to act in the interests of peace and harmony, since it was then believed in England by others beside Pitt that the two races would more happily and successfully work out their political fortunes apart from each other in those early days. By the beginning of the present century there were in the British North American provinces, now the Dominion of Canada, five distinct provinces governed by the following authorities :

A governor-general in the province of Lower Canada, then the most important—exercising a nominal supervision, as the representative of the sovereign, over all British North America.

A lieutenant-governor in Nova Scotia, New Brunswick, Prince Edward Island, and Upper Canada.

An executive council in the provinces of Upper and Lower Canada, generally composed of members of the legislative council.

A legislative council in each province, appointed by the crown—in Nova Scotia, New Brunswick, and Prince Edward Island, also exercising executive functions.

An assembly, elected by the people on a limited franchise, in all the provinces.

The total population of all British North America did not at that time reach one hundred and eighty thousand souls, of whom at least one hundred thousand were French Canadians. Nova Scotia was then confined to her present provincial limits ; Cape Breton was a distinct province for some years under the administration of a lieutenant-governor and an executive council until it was finally united in 1820 to Nova Scotia ; New Brunswick extended from the Gulf of St. Lawrence on the east to the ill-defined boundary of Maine on the west, and from Lower Canada on the north to the Bay of Fundy and Nova Scotia on the south. Lower Canada was then confined to the country on both sides of the St. Lawrence River, from Labrador and the Gulf to the river Ottawa, which formed the eastern boundary of the



province of Upper Canada, which extended indefinitely westward to Lakes Huron and Superior, and was bounded on the south by the St. Lawrence River and the Lakes. By 1800 we find that the present Dominion and the United States had practically entered on the work of developing the great country now within their respective jurisdictions. The remarkable vigor and enterprise displayed by the people of the new federation from the very commencement of their history as an independent nation, gave them a vantage-ground at the outset over provinces with diverse nationalities and interests, without any common bond of union except their fealty to England, whose public men and people, as a rule in those days, took little interest in their development, and many of whom always seemed possessed by the idea that it was only a question of time when these countries would be absorbed in the American union of States. Assuredly no one could, in those early days of struggle, have ventured on the prediction that, long before the century closed, these isolated provinces would be able to present a bold front to the energetic and prosperous communities to their south, eventually become a strong factor in the development of the wealth of this continent, and actually impose an effectual barrier to the ambition of the republic itself.

The period which extends from 1800 to 1840, was distinguished by the remarkable progress made by the United States in population, wealth, and national strength. Spain and France left the valley of the Mississippi for ever, and the United States at last possessed a vast territory extending on the north from British North America, the Hudson's Bay Territory, and Rupert's Land to Mexico and the Gulf of Mexico on the south, and on the east from the Atlantic to the Pacific Ocean on the west, where the nation claimed a great range of coast reaching even beyond the Columbia River, and embracing the valuable Oregon country. The tide of population continued to flow steadily through the passes and valleys of the Alleghanies and to build up the great West. By 1840 the total population of the United States was nearly eighteen millions, of whom

a million and a half now lived in Ohio, seven hundred thousand in Indiana, five hundred thousand in Illinois, over thirty-one thousand in Wisconsin—all States carved out of that Northwest which was once claimed by France, and might have remained in English hands had English statesmen been more firm and had felt any confidence in the future of Canada. The Federal Union of 1789 had, during this period, increased from thirteen to twenty-six States—in itself very eloquent evidence of the material development of the country and of the success of the federal system of government.

During this period of forty years Canada passed through some of the most trying crises of her history, which have largely influenced her political and material development to the present time. With the causes of the war of 1812 the Canadian people had nothing whatever to do; it was quite sufficient for them to know that it was their duty to assist England with all their might and submit to any sacrifices which the fortunes of war might necessarily bring to a country which became the principal scene of conflict. No Canadians would willingly see a repetition of that contest between peoples who should be always friends, but they can nevertheless look back to the history of the struggle with the conviction that, wherever duty claimed the presence and aid of Canadians, they were ready and never failed to show their ability to defend their land and homes. The history of the battles of Queenston Heights, Stoney Creek, Chrysler's Farm, Chateauguay, and Lundy's Lane shows that they were not won by English regulars exclusively, but that in all of them the Canadian volunteers well performed their part. At Chateauguay, Colonel De Salaberry, a French Canadian officer, with a small force of three hundred Canadians, gained so signal a victory over General Hampton, with some four thousand men, that he was forced to retreat from Lower Canada.<sup>1</sup> At Chrysler's Farm, General Wilkinson,

<sup>1</sup> See Henry Adams, "History of the United States," vii., 192-96. American and Canadian accounts differ as to number of Hampton's force. I take Adams statement as probably the most accurate, since it agrees with Christie (ii., 124).

with at least three thousand men, was beaten by some eight hundred English and Canadians under Colonel Morrison.<sup>1</sup> Ontario, then Upper Canada, with a population of about eighty thousand souls at the most, was the only province that really suffered from the war. From the beginning to the end its soil was the scene of the principal battles; the town of Niagara and the public buildings of York, now Toronto, were burned and a great amount of valuable property destroyed by the invading forces. The war taught the United States that there was greater strength in Canada than they believed when they commenced hostilities. "On to Canada" had been the cry of the war party in the United States for years; and there was a general feeling that the upper province could be easily taken and held until the close of the struggle when it could be used as a lever to bring England to satisfactory terms or else be united to the federal union.<sup>2</sup> The result of the war showed, however, that the people of the United States had entirely mistaken the spirit of Canadians and that the small population scattered over a large region, with hardly a town of any large importance, was animated by a stern determination to remain faithful to England. Canadians came out of the conflict with a confidence that they had never felt before, and of their ability to maintain themselves in security on the St. Lawrence and the Great Lakes. If Canadians gained confidence in their future, the United States themselves began to develop a national sentiment which increased in strength from that time forward until the close of the great Rebellion which gave a death-blow to the dangerous and unsound principle of State sovereignty and increased so largely the power of the central government.<sup>3</sup> Although the war ended without any definite decision on the questions at issue between the United States and England, the rights of

<sup>1</sup> "This was the least creditable of the disasters suffered by American arms during the war. No excuse or palliation was ever offered for it."—Henry Adams, "History of the United States," vii., 189.

<sup>2</sup> *Ibid.*, vi. 141, 146, 212.

<sup>3</sup> See "The Effect of the War of 1812 upon the Confederation of the Union," by Dr. N. M. Butler, in "Johns Hopkins University Studies," fifth series, vii.

neutrals were strengthened and the pretensions of England as to the right of search are not likely to be urged again in times of war. One important result of the war was the fact that it re-opened the question of the fisheries. I have already stated that the treaty of 1783 had conceded large rights and liberties to the fishermen of the United States on the banks and coasts of Newfoundland and of the maritime provinces of British North America. The people of that country had claimed substantially that they had an original and prescriptive right in the fisheries which they had used as British subjects in North America. In the treaty of 1783 they were given the "right" to fish on the Grand and other banks of Newfoundland and in the Gulf of St. Lawrence and "at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish"; but they were to have only "the liberty" of taking fish on the coasts of Newfoundland, and also of "all other of his Britannic Majesty's dominions in America; and also of drying and curing fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, [then including New Brunswick] Magdalen Islands, and Labrador, so long as the same shall remain unsettled." In the one case, it will be seen, there was a recognized right, and in the other only a mere liberty or privilege extended to the fishermen of the United States. This clause in the treaty was one of the concessions which Oswald conceded to the persistence of the American Commissioners who attached great importance to the fisheries of the provinces; but after the close of the war of 1812, when it was necessary to consider the terms of peace, the English government took a decided ground that the war had repealed these temporary liberties and refused to extend them except the free navigation of the Mississippi was again conceded to the English. Indeed the Americans would have obtained all their old advantage had they been prepared to accede to the English proposition.<sup>1</sup> The contention of the federal government was to the effect that the treaty of

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<sup>1</sup> See Henry Adams, "History of the United States," ix., 44-53.

1783 was of "a peculiar character," and that because it contained a recognition of American independence it could not be even in part abrogated by a subsequent war between the parties that had agreed to its provisions. The propositions laid down by the British government in answer to this extraordinary claim, are unanswerable. It was clearly impossible for England "to give to her diplomatic relations with one state a different degree of permanency, from that on which her connection with all other states depends." She could not consider "any one state at liberty to assign to a treaty made with her such a peculiarity of character as shall make it, as to duration, an exception to all other treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions." In short it was correctly argued that "the claim of an independent state to occupy and use at its discretion any portion of the territory of the other, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation." To quote the language of an able English writer on international law, this "indefensible pretension" was abandoned in the treaty of 1818, and "fishery rights were accepted by the United States as having been acquired by contract."<sup>1</sup> The convention of 1818 forms the legal basis of the rights which Canadians have always maintained in the case of disputes between themselves and the United States as to the fisheries on the coasts, bays, and harbors of Canada. It provides that the inhabitants of the United States shall have forever the liberty to take, dry, and cure fish on certain parts of the coast of Newfoundland, on the Magdalen Islands, and on the southern shores of Labrador; but they "renounce forever any liberty, heretofore enjoyed" by them to take, dry, and cure fish, "on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America"; provided, however, that "the American fishermen shall be admitted to enter such bays and harbors for the

<sup>1</sup> Hall, "A Treatise on International Law," (3d ed.) pp. 97-99.



purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever." And American fishermen at the same time are to be "under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them." It seems that in the original draft of the treaty the word "bait" appeared after "water," but it was left out in the final agreement when the commissioners of the United States found that they must concede this and other liberties previously enjoyed in order to obtain as extensive a territory as possible for inshore fishing. Between 1818 and 1854, when a reciprocity treaty was arranged between the United States and the provinces of British North America, fishing vessels belonging to the former country were frequently detained, seized, and in some cases condemned for the following evasions of the convention of 1818:

1. Fishing within the prescribed limits.
2. Anchoring or hovering inshore during calm weather without any ostensible cause, having on board ample supplies of wood and water.
3. Lying at anchor, and remaining inside the bays to clean and pack fish.
4. Purchasing and bartering bait, and preparing to fish.
5. Selling goods, and buying supplies.
6. Landing and transshipping cargoes of fish.<sup>1</sup>

Until 1854, there was much correspondence between the governments of England and the United States on the subject of the treaty, and every effort was made by American fishing vessels to evade the stipulations of the agreement. The interests of Canada were, in a measure, protected by the convention of 1818; for, had the treaty of 1783 remained in operation, serious disputes must have arisen, the

<sup>1</sup> From a "Review of President Grant's Recent Message (Dec., 1870) to the U. S. Congress, Relative to the Canadian Fisheries and the Navigation of the St. Lawrence River," p. 11. This pamphlet was understood to be written or inspired by Mr. Mitchell, minister of marine and fisheries, in the Canadian government.



maritime provinces of Canada would have been practically handed over to New England, and a doctrine established, as far as Canada was concerned, entirely at variance with sound usage and international law. In the case of a division of territory between two nations originally one, the new state can properly claim the sole enjoyment of all local and territorial rights, which are natural and necessary adjuncts of its actual territorial possessions. The old state, from whom the new state has separated, does not lose any of its own distinct local and territorial rights, which naturally and necessarily appertain to it as a national sovereignty; and yet this is what the government of the United States practically contended when they urged a prescriptive right in fisheries which, within the limits recognized by the law of nations—three miles from the coasts and bays,—remained as much British possessions as the land or shore washed by those territorial waters. It is obvious that each state must retain all its territory, and all those rights appertaining to that territory, necessary to its existence as a separate nation, and no other state can claim a common right to the use of such territory, except under an express conventional agreement with the state to whom that territory belongs.

Looking at its general results, however, the war of 1812-15 gave no special advantage to the Canadian people. When peace was proclaimed, not an inch of Canadian territory was held by American troops. On the other hand, England held during the war all the territory of Maine between the St. John and the Penobscot. Her flag also flew over Mackinaw, the key to the Northwest. "It is not impossible," says an American writer, "that the war of 1812 for a time revived English hopes of again recovering the Northwest. . . . Only three of the thirty-two years lying between 1783 and 1815 were years of war; but for one half of the whole time the British flag was flying on the American side of the boundary line. In the largest sense, therefore, the destiny of the Northwest was not assured until the treaty of Ghent."<sup>1</sup> Had the English seized this opportunity of finally settling the western bound-

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<sup>1</sup> Hinsdale, "The Old Northwest," p. 185.

ary of New Brunswick, the difficulties that afterwards arose might have been for once and all settled, and Canada would have obtained a territory most useful to the commercial development of the present Dominion.<sup>1</sup> But, in all probability, the victory gained by the United States at Plattsburg, the failure of the attempt on Baltimore, and Drummond's repulse at Fort Erie, had much influence in inducing England to come to terms with the republic<sup>2</sup>; and it was fortunate for the provinces that they were allowed, in the end, to control their most valuable fisheries. Fate had decreed that the Mississippi River should flow continuously through the lands of the new nation, and that Canada should find in the valley of the St. Lawrence one of the chief sources of her prosperity and future greatness.

Before the close of the period which we are considering, clouds again appeared on the Canadian horizon, arising out of the political troubles in Upper and Lower Canada. The war of 1812 had deeply absorbed the attention of the Canadians, and quieted their political differences for the while; but, with the coming of peace, discontent gradually spread among the people in the provinces, in consequence of all power being practically concentrated in the governors and the executive and legislative councils,—these bodies being virtually the nominees of the former. The representatives of the people in the several elective assemblies were demanding that the legislative councils should be elected by the people, and that the people's House should have control of the revenues and expenditures, and that a larger measure of self-government, in short, should be conceded to the provinces. In Upper Canada, as indeed was the case in all the provinces, a bureaucracy ruled, and the name

<sup>1</sup> Henry Adams, "History of the United States" (ix., 7 *et seq.*), refers to the demands made by the Canadians for the protection of their interests, "ignorantly and wantonly sacrificed by the treaty of 1783." On the other hand, Secretary Monroe (afterwards President) suggested "the transfer of the upper parts and even the whole of Canada, to the United States."—*Ibid.*, p. 11.

<sup>2</sup> See *Ibid.*, (ix., 35-42), who shows that the Duke of Wellington, who had no ambition to go to Canada, influenced the imperial government in abandoning its claim for territory.

"family compact" was given, in derision, to the governing class. The home government had too often in those days treated colonial affairs with indifference, and attempted by the assistance of a few clerks to manage matters which should have been left to the sole control of the colonial communities. The governors were in the very nature of things so many autocrats who depended for advice and support on crown-appointed officials, and were necessarily brought into conflict with the popular houses that were always demanding the extension of their privileges in accordance with sound principles of parliamentary government. The imperial authorities were no doubt dilatory in providing effective remedies; they were too often misled by choleric military governors, little versed in political science; they were frequently in a quandary on account of a division of opinion among the various provincial leaders who were suggesting means of settling existing difficulties. Looking calmly and dispassionately at the history of those times we must admit there is no reason to conclude that British ministers were disposed to do the people a grievous injustice, and sooner or later the questions at issue must have found a satisfactory solution. But Papineau, an impassioned orator and a rash popular leader, led a number of his French Canadian compatriots into a rebellion which was easily repressed. In Upper Canada a little, peppery Scotchman of the name of MacKenzie, who had done much in the press, and in the legislature to expose the defects and weaknesses of the political system, became impatient at the last, when public grievances failed to obtain ready redress, and followed Papineau's example only to see his conspiracy exposed and defeated before it obtained any headway. In no province were the mass of the people willing to join in a rebellion to gain political privileges which could be won in the end by steady constitutional agitation, and the exercise of a little patience on the part of its advocates. In the lower provinces Mr. Howe and other leaders of the popular party maintained a strictly constitutional attitude and publicly censured Papineau and MacKenzie for their rash appeal to arms.

Papineau and some of his friends went into exile, and several unruly spirits suffered death on the scaffold, though on the whole the English government acted with lenity through this trying ordeal. MacKenzie fled to the United States, and whatever sympathy he may have won by his attacks on public grievances before the outbreak of the rebellion—if we can so characterize a mere revolt of a relatively few discontented spirits—it must have been largely alienated by his subsequent conduct. A cool, collected patriot would have recognized the fact that the people would not sustain him in further attempts to create a civil war; but he industriously set to work to violate the neutrality of the country by collecting bands of ruffians in the city of Buffalo, for the purpose of invading Canada. The consequence was that the frontier of Upper Canada was kept for months in a state of fever by his criminal conduct, and the two countries were brought to the verge of war. As in the case of the Fenian invasion many years later, the authorities of the United States were open to some censure for negligence in winking at these suspicious gatherings avowedly to attack a friendly country. In fact, guns and ammunition were openly taken from arsenals of the government, and a regiment of militia was quietly looking on while all these preparations were being made for the invasion of Canada. The raiders seized an island just above Niagara Falls on the Canadian side, as a base of operations, and a vessel was freely allowed to ply between the island and the mainland with supplies. It became necessary to stop this bold attempt to provide the freebooters on Navy Island with the munitions of war, and a Canadian expedition was accordingly fitted out to seize the *Caroline*, the vessel thus illegally employed. As it happened, however, the vessel was found on the American side; but at such a time of excitement men were not likely to consider consequences from the point of view of international law. She was cut from her moorings on the American side, her crew taken prisoners, one man killed, and the vessel set on fire and sent over the falls of Niagara. This was clearly one of those junctures when no other means were

available for protecting Canada from the lawless attacks of men who found the *Caroline* of great assistance in their intended raid on Canadian territory. The United States authorities had made no special effort up to this moment to prevent this unwarrantable use of their soil by ruffians, and the Canadians were forced by every consideration of self-protection to take the law into their own hands. There was probably a technical violation of the territory of the United States, but looking now at the whole question dispassionately, one cannot help feeling that a little more determination on the part of the government of the United States would have prevented all the difficulty that afterwards arose when they demanded an apology for an act which was necessary on account of the absence of that "due diligence" which they afterwards pressed in the case of the *Alabama*.<sup>1</sup> The government of the United States, however, subsequently recognized their obligations to Canada and took measures to vindicate the neutrality of their territory.<sup>2</sup>

<sup>1</sup> See Hall, "International Law," pp. 267, 268.

<sup>2</sup> The press of the State of New York took an active part in encouraging these raids into Canada, and one wild writer gave expression to the following poetic tribute to the ill-fated *Caroline*, which, one would suppose, was as worthy of public admiration as the American warship *Constitution* in the memorable days of 1812:

"On—wildly onward—sped the craft,  
As she swiftly neared the verge;  
And the demon-guards of the black gulf laughed,  
And chanted a hellish dirge;  
And the booming waters roared anew  
A wail for the dead and dying crew.

"As over the shelving rocks she broke,  
And plunged in her turbulent grave.  
The slumbering genius of Freedom woke,  
Baptized in Niagara's wave,  
And sounded her warning tocsin far,  
From Atlantic's shore to the polar star."

Taken from the *Rochester Democrat*. See Dent, "Canada since the Union of 1841," i., 162.



As we have already said, the year 1840 was a turning-point in the history of the material and political development of British North America. The two Canadas were reunited under the name of the Province of Canada, and the basis was laid for the complete measure of self-government that is now enjoyed by all the communities of the present Dominion. Responsible or parliamentary government, by which a ministry can hold office only whilst it enjoys the confidence of a majority of the popular branch or Commons House, obtained full recognition in the provinces after a stern battle with the home authorities. The Canadian legislatures were given control of their revenues and expenditures, and year by year received additional concessions from the imperial government in accordance with the new policy which was practically commenced by Lord John Russell in 1839, and carried out by his immediate successors in the administration of colonial affairs. The total population of British North America now exceeded one million of souls, of whom at least six hundred thousand were French Canadians, who looked for a time with suspicion on the union under the belief that it was a direct blow against their special institutions. As the years passed by, however, they found that they were treated in a spirit of justice, and were able to exercise a potent influence in political affairs. From 1840 to 1867 the relations of Canada and the United States became much closer, and more than once assumed a dangerous phase. In 1840 the authorities of New York arrested one Macleod on the charge of having murdered a man who was employed on the *Caroline*. It appeared, however, on inquiry that Macleod had not actually assisted in the capture of the vessel, and that the charge rested on the doubtful evidence of some questionable characters, who declared he had been heard to boast of his part in the exploit. The British government at once took the sound ground that, in any case, the destruction of the *Caroline* was a "public act of persons employed in her Majesty's service, and that it could not be justly made the occasion of legal proceedings in the United States against



the individuals concerned, who were bound to obey the authorities appointed by their own government." The Washington government evaded the whole question at issue by throwing the responsibility on the State authorities and declaring that they could not interfere with a matter which was then within the jurisdiction of the State courts. The matter gave rise to much correspondence between the two governments, but happily for the peace of the two countries the courts acquitted Macleod, as the evidence was clear that he had had nothing to do with the actual seizing of the *Caroline*, and the authorities at Washington soon afterwards acknowledged their responsibility in such affairs by passing an act directing that subjects of foreign powers, if taken into custody for acts done or committed under the authority of their State, "the validity or effect whereof depends upon the law of nations, should be discharged."<sup>1</sup> The imperial government throughout this affair acted in a spirit of much forbearance, and simply with the object of obtaining the acknowledgment of a sound principle of international law, and it must be admitted that the Washington authorities showed an unwillingness to move determinately in the matter which was very irritating to Canadians, although allowance must be made for the fact that in those days the government of the Federal Union was weak and the principle of State sovereignty was being pressed to the extreme limit. But on this point an able Canadian publicist has truly said that a "nation cannot relieve itself of responsibility by so constituting its government as to put it out of its power to discharge its duties to other sovereign states."<sup>2</sup> The government of the United States, I have just shown, acknowledged the soundness of this doctrine by passing a statutory enactment.

Two other questions were settled during this important period in Canadian history, after having imperilled the peaceful relations of the two countries for years. By 1840

<sup>1</sup> See Hall, "International Law," pp. 311-313.

<sup>2</sup> Hon. David Mills on the Behring Sea question. See *Toronto Globe*, August 3, 1890.

the question of the disputed territory between Maine and New Brunswick had assumed grave proportions. In a paper of this character it is impossible to do more than outline the opinions always entertained by Canadians on a question of a very complicated character, to which reams of literature have been devoted in the past. The first effect of the dispute on the material development of Eastern Canada was the failure of an effort that was made in 1835 to construct a line of railway from Quebec to St. Andrews, on the Bay of Fundy, on account of the clamor raised by the people of Maine on the ground that the road would run through territory which they claimed as their own. By the treaty of 1783, the boundary was to be a line drawn from the source of the St. Croix, directly north, to the highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the river St. Lawrence; thence along the said highlands to the northwesternmost head of the Connecticut River; and the point at which the due north line was to cut the highlands was also designated as the northwest angle of Nova Scotia. The whole question had been the subject of several commissions and of one arbitration from 1783 to 1842, when it was finally settled. Its history appears to be that of a series of blunders on the part of England from the beginning to the end. The first blunder, it is claimed, was made in 1798, when it was decided to make the eastern branch of the St. Croix, or the Chiputnaticook, the line of boundary, instead of the western branch, the Schoodic, which seems to have been the true St. Croix of early times, and of which the source is some fifty miles distant from the source of the eastern branch. The result was that when the line due north came to be drawn from the source of the St. Croix, now decided to be the eastern branch, a large and valuable slice of English territory was practically given up to Maine. The next grave mistake was made by Lord Palmerston in not accepting a proposal made by President Jackson to ascertain the true north-western angle of Nova Scotia, or the designation of the highlands, in accordance with certain well understood rules

in practical surveying which have been always considered obligatory on this continent. A Canadian engineer of the highest standing in his profession has very clearly explained the effect of this reasonable proposition:

"The boundary as far as the head of the minor branch of the St. Croix had been agreed upon by both nations, and a monument had been erected as a fixed point of departure. It was now proposed and urged by the United States to discard the due north line, to seek west of that line the undisputed highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to find the point in the 'watershed' of these highlands nearest to the north line, and to trace a direct course from it to the monument already established. If this principle had been adopted, a straight line would have been drawn from the monument at the head of the Chiputnaticook to a point which could have been established with precision in the 'watershed' of the highlands which separate the sources of the Chaudière from those of the Penobscot; here being the most easterly point in the only highlands agreeing beyond dispute with the treaty. The point is found a little to the north and west of the intersection of the 70th meridian west longitude, and the 46th parallel of north latitude."<sup>1</sup>

For some unexplained reason, probably from entire ignorance of the whole question, the British government refused to accept the reasonable offer made by President Jackson, and the question was allowed to remain in abeyance until it was submitted to Daniel Webster and Alexander Baring—better known in the history of those times as Lord Ashburton,—who were chosen by the governments of the United States and England, respectively, to arrange all matters of controversy between the two countries. The result was a compromise by which the United States obtained seven twelfths, and the most valuable section of the disputed territory, and Canada a much smaller and comparatively valueless tract of land. In fact, after half a century of controversy, the English government gave up to the United States, in all, eleven thousand square miles of land, or the combined areas of Massachusetts and Connecticut. It would be impossible to disabuse the great majority of Canadians of the fixed idea, which has come to them as the heritage of those badly

<sup>1</sup> Sandford Fleming, "*The Intercolonial: A History, 1832-1876*," pp. 5-39.

managed negotiations, that their interests were literally given away by the too conciliatory and amiable English envoy who knew nothing of the question, and was quite indifferent, like most Englishmen of those days, to Canadian matters. Lord Ashburton received the thanks of the British Parliament, ostensibly for removing a long-standing cause of irritation between two nations—a wise and commendable motive when it is not attended with injustice to one of the parties to the settlement, that party being in this case Canada. In reality he should have been thanked for enlarging the area of Maine. Several facts connected with this international episode have always prevented Canadians looking at the result with feelings of self-gratulation. In the first place, the choice of the plenipotentiary was unfortunate, since he had lived and married in the United States, had large pecuniary interests in that country, and had no special training to fit him to compete with so acute and masterly an intellect as Daniel Webster's. In the next place, too lavish, even fulsome adulation was showered upon Lord Ashburton wherever he went in the United States; he was described by one of the newspapers as "an Englishman, indeed, to the heart's core, yet one who cherishes strong attachments to the republic."<sup>1</sup> In the third place it is interesting to note that Mr. Webster named one of his grandsons after this complaisant and easily managed Englishman. And finally, Canadians have never been satisfied with the part played by so able a statesman as Mr. Webster when Mr. Rives, at his request, produced in the Senate a map which the former had had in his possession throughout the whole negotiations, sustaining the claim which England had always made to the disputed territory. This map, which was found among the French archives in Paris by the historian Jared Sparks, was kept studiously concealed, until it was thought necessary to make an effort to show the people of Maine that they ought to be well satisfied with nearly two thirds instead of the whole loaf.

<sup>1</sup> See *New York Commercial Advertiser*, quoted in Dent's "Canada," vol. i., p. 206, note.

For my part I do not attach much importance to any maps that could be produced by either party in support of its pretensions. All of them were largely inaccurate, too often mere guesswork on the part of their draughtsmen. It is even said that a map was brought forward in the English Parliament to prove that Lord Ashburton had not actually surrendered everything, as it was strongly contended by the press and statesmen of the Liberal party.<sup>1</sup> I believe that under any circumstances the negotiators had made up their minds from the outset to a compromise, and that Lord Ashburton was practically pledged to a settlement at any price, even if it gave up all the territory in dispute to the United States. The isolated provinces in those days were endeavoring to establish the principles of local self-government on sound foundations, and had little or no opportunity of exercising any direct influence in imperial councils on this question. If we look at the map we will see at a glance the important effect of this settlement upon the territorial limits of the present Dominion. The State of Maine now presses like a huge wedge into the provinces of New Brunswick and Quebec. As already stated, the persistency of Maine, fifty years ago, stopped railway communication between the Upper and Lower provinces, and practically prevented the development of intercolonial trade until after 1867. In these later times a "Canadian short line" railway has been forced to go through Maine in order to connect Montreal with Fredericton, St. Andrews, and the maritime provinces gen-

<sup>1</sup> A somewhat curious incident occurred in the course of the Oregon controversy. Mr. Buchanan, when secretary of state at Washington in 1845, stated in one of his despatches to Mr. Pakenham, the English plenipotentiary: "Even British geographers have not disputed our title to the territories in question. There is a large and splendid globe now in the Department of State, recently received from London, and published by Maltby & Co. 'manufacturers and publishers to the Society for the Diffusion of Useful Knowledge,' which assigns this territory to the United States." The real fact was, the globe in question had been ordered for the United States by Mr. Everett, when minister to England, and the boundary was marked by the maker to please the purchaser. Mr. Everett disclaimed having had any share in the imposition, the moment his attention was drawn to the fact. See the *Quarterly Review*, vol. lxxvii., p. 567, note.



erally. Had the true St. Croix been chosen in 1798, or even President Jackson's offer been accepted, this line would go entirely through Canadian territory, and be entirely controlled by Canadian legislation. It would solve many difficulties that have arisen as to the question of providing the shortest possible communications between the Atlantic and the great West of the Dominion through exclusively Canadian territory.

During this period was settled another question which was the subject of much heated controversy between England and the United States for more than a quarter of a century, and in 1845 brought the two countries very close to war. In 1819 the United States obtained from Spain a cession of all her rights and claims north of latitude  $42^{\circ}$ , or the southern boundary of the present State of Oregon. By that time the ambition of the United States was not content with the Mississippi valley, of which she had at last full control by the cession of the Spanish claims and by the Louisiana purchase of 1803, but looked to the Pacific Coast where she made pretensions to a territory stretching from  $42^{\circ}$  to  $54^{\circ} 40'$  north latitude, or a territory four times the area of Great Britain and Ireland, or of the present province of Ontario. The claims of the United States to this region, which were persistently urged until 1846, when they were for the most part conceded, rested on prior discovery and exploration and on the cessions by Spain and France. Only a few points of the complicated discussion that took place between England and the United States on the question can be adduced in this paper, but they are the most material to the issue, in fact those on which the rights of the two contestants practically turned. It was claimed on the part of the United States that a master mariner named Gray first discovered the Columbia in 1792, and thereby gave them a title to the countries watered by that great river; that subsequently Lewis and Clark, acting under the instructions of the Washington government, from 1805-6, explored the Oregon country; that that government from that day by various official and legislative acts assumed the country to



be their own, regularly acquired under the law of nations; that subsequently John Jacob Astor and other citizens of the United States established a post in the valley of the Columbia, which was seized by the English troops and restored after the war of 1812; that American citizens flowed into the country between 1840 and 1845, until in the latter year there were over 4,000 people in Oregon. On the other hand the English always contended that the Pacific Coast, from 42° to Nootka Sound in 49° 33', had been discovered and actually surveyed by her own navigators; that Drake had called the country New Albion in 1579; that Cook entered Nootka Sound in 1778, and that Vancouver in 1792 noticed what appeared to be a great river outside a bar, but, unfortunately for himself and England, passed it; that afterwards hearing from Gray of his discovery, he sent his tender under Lieutenant Broughton up the river; that the latter actually navigated it for at least one hundred miles, and took possession of the country for England; that Gray, having mistaken the proper channel, never actually ascended the river proper; that Alexander Mackenzie first of white men explored in 1793 the country drained by the Fraser River, west of the Rocky Mountains, or the whole of the country north of 49° to which the United States made a claim; that Thompson, another famous British explorer, established the first settlement, or post of any kind, west of the same mountains, and explored the main river of the Columbia, while Clark and Lewis only explored the southern tributaries; that the Hudson's Bay Company had, previous to any settlement by citizens of the United States, established several posts or forts in a territory where they had the right to trade under charter from the English king; that the rights of Astor's company, which had erected a post at Astoria, were legally conveyed, in 1813, to the English Northwest Company, and during the war of 1812 the English flag was hoisted on that post; that the majority of Astor's company in the inception were English subjects; that when the post was restored without due consideration at the end of the war the question of sovereignty was left to be settled

by subsequent treaty. Now looking fairly at claims to territorial sovereignty so very contradictory, we can see, in the first place, that while Gray was certainly the first man who entered the Columbia, he was not fortified by any commission from the United States, and did not take possession of the country by any formal act. "A discovery not previously authorized by the nation," says Mr. David Dudley Field, an American authority on international law who on this point agrees with Phillimore and other writers on the same subject, "cannot be subsequently ratified by it to the prejudice of any other nation, without the consent of the latter."<sup>1</sup> Consequently the mere explorations of Lewis and Clark, any resolutions or measures of Congress, or proclamations of Presidents, were valueless if England had a valid claim to the territory previous to Gray's discovery. The settlements made by American citizens in later years, in their desire to strengthen the claims of the United States, did not make the region a portion of that country in the face of the English pretensions; no more than did the settlements in that part of New Brunswick ceded in 1842 to the United States, give an English title to that district. If Gray's discovery did not give an inchoate title to the region, since he had no national or official standing, then the acts of Broughton, who was regularly commissioned and took formal possession of the country, gave greater strength to the English claim, which was based, in the first instance, on the discovery, exploration, and survey of the Pacific Coast. The explorations, by Mackenzie and Thompson were also in the direction of strengthening the claim, which the discovery of the continental sea-coast gave to the English, "to the interior, to the sources of the rivers emptying within the discovered coast, to all their branches, and the territory watered by them."<sup>2</sup> The claims of the

<sup>1</sup> Mr. David Dudley Field, cited in a valuable paper on "The Development of International Law as to the Newly Discovered Territory" by W. B. Scaife, in the Papers of the American Historical Association, July, 1890, p. 80.

<sup>2</sup> Mr. David Dudley Field. See article already cited from Papers of Am. Hist. Association, July, 1890.

English then certainly so far, when viewed in the light of the admitted principles of international law, seem much stronger than those of the United States. But here rises the question of settlement and occupation, which must within a reasonable time follow discovery. Of what value, in this argument, must be considered the position of the Hudson's Bay Company in Oregon, or Thompson's settlement on Fraser's Lake. The mere explorations of Mackenzie and Thompson were certainly not that occupation, in the legal sense which should follow discovery, and the same remark applies to Lewis and Clark's expedition. The history of Astoria does not establish any valid claim; the ground it occupied, indeed, was not recognized United States territory; the company actually sold out its claim to an English company, regularly established under an English charter on land claimed to be England's. The restoration of the post was assuredly a blunder, but it did not give a title to a disputed territory. The fact that the Hudson's Bay Company occupied the region, is adduced in support of the English claim; but how far the erection of forts and posts by a mere fur-trading corporation can establish legal occupation and settlement, is a question. One thing certainly must be admitted: the charter granted to that huge monopoly—the creation of a spendthrift king, in the first instance, and the pet of English governments, long indifferent to Canadian interests—was a great injury to this continent for a hundred years. It was a power behind the throne in the Oregon controversy, ever resisting the United States claims for its own selfish purposes, and at the same time imposing an irresistible barrier to that settlement which would be destructive of their commercial interests in a region as large as Europe in the days when Oregon was in dispute. For years it kept from the world the knowledge of that great Northwest, to which the hopes of Canada now turn with so much confidence in the working out of her grand schemes of internal development. But the United States urged other claims to the vast region than those just reviewed. The cession by Spain of all her rights on the Pacific Coast above

42° was also brought forward as substantial evidence of the soundness of the title of the United States. The voyages of Juan Perez and Don Bruno Heceta, in 1774 and 1775, were not made known to the world by Spain until long afterwards, in 1802; and the discovery of Nootka Sound was certainly due to the English and not to them. The Spanish navigators did not enter the Columbia, if they ever really saw it, and certainly never attempted any occupation and settlement of the coast. England, by the convention of 1790, made Spain recede from her pretensions to the coast, northward of the Spanish settlements, and open it for trade and settlement to other nations. This convention, however, was purely commercial, and was virtually renewed in 1815; but in any case it simply left the respective claims of England and Spain in abeyance,—did not establish the sovereignty of either in Oregon. Neither did the Louisiana purchase give greater force to the United States claim; for it is not established that France ever claimed that Louisiana extended to the Pacific. In fact, Spain, by her treaty of 1819, showed she believed she had alone rights on the Pacific Coast. The weakness of this union of claims was long ago exposed by an able critic in the *North American Review*.

"We cannot pile these pretensions one upon another; their force is not cumulative, but disjunctive. If Spain actually surveyed the coast, and discovered the mouth of Columbia, in 1775, then Captain Gray, in 1792, and Lewis and Clark, in 1805, were only intruders; and, on the other hand, if the discoveries of Gray, Lewis, and Clark make out a perfect right,—if their *explorations*, in fact, can be called *discoveries*, then Oregon was vacant and unappropriated,—a mere *terra incognita*, open to the first comer,—down to 1792, and the antecedent claims of France and Spain are mere nonentities."<sup>1</sup>

I have dwelt on these important points of this international question, to show how difficult it was to come to a perfectly judicial conclusion when both parties persistently

<sup>1</sup> See the *Quarterly Review* for 1845-6 (vol. lxxvii., pp. 526-63), where the whole English case is ably argued in all its aspects. The case of the United States is fully stated in a recent work on Oregon in the American Commonwealth Series. I have also consulted on this question all the most important works cited in the introduction of Barrows' work.

urged claims, based on such contradictory facts, to the same territory. It was certainly, under the circumstances, a question for compromise. The people of the United States, conscious at last of the importance of the territory, began to bring their influence to bear on the politicians, until by 1845 the Democratic party declared for "54° 40', or fight." Mr. Crittenden announced that "war might now be looked upon as almost inevitable." Happily, President Polk and Congress came to more pacific conclusions, after a good deal of warlike "talk"; and the result was a treaty, by which England was satisfied with the line 49° to the Pacific coast, and the whole of Vancouver Island, which, for a while, seemed likely to be divided with the United States. In fact, England yielded all she had contended for since 1824, when she first proposed the Columbia as a basis of division. But even the question of boundary was not finally settled by this great victory, won for the United States by the persistency of her statesmen. The treaty of 1846 continued the line of boundary westward along "the 49° parallel of north latitude to the middle of the channel which separates the continent from Vancouver Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean." Any one reading this clause for the first time, without reference to the contentions that were raised afterwards, would certainly interpret it to mean the whole body of water that separates the continent from Vancouver,—such a channel, in fact, as divides England from France. But it appears that there are a number of small channels which run through the islands of the great channel in question, and the clever diplomatists at Washington immediately claimed the Canal de Haro, the widest and deepest, as the channel of the treaty. Instead of at once taking the ground that the whole body of water was really in question, the English government claimed another channel, Rosario Straits, inferior in some respects, but the one most generally and indeed only used at the time by their vessels. The importance of this difference of opinion chiefly lay in the fact that the Haro gave San Juan and other small islands, valu-



able for defensive purposes, to the United States, while the Rosario left them to England. Then, after much correspondence, the British government, as a compromise, offered the middle channel, or Douglas, which would still retain San Juan. If they had always adhered to the Douglas, which appears to answer the conditions of the treaty since it went through the middle of the great channel, their position would have been much stronger than it was when they came back to the Rosario. By the Reverdy Johnson agreement of 1867, the several issues connected with the clause—the whole channel or the small channels—were to be submitted to arbitration, but it never reached the Senate. The English representatives at the Washington convention of 1871 attempted to have a similar reference, but the United States Commissioners, aware of their vantage-ground, would consent to no other arrangement than to leave to the decision of the Emperor of Germany the question simply whether the Haro or the Rosario channel came within the meaning of the treaty, and he decided in favor of the United States. This decision is said to have been assisted by the fact that “in the royal library of Berlin, near to which the court of arbitration was held, a library rich in maps and charts, the Haro was the only channel named for the region.”<sup>1</sup> It is also stated on the same authority, that Senator Benton, Mr. Bancroft, and Mr. Buchanan, understood at the time the treaty was concluded, that the Canal de Haro would be the dividing channel, and that Lord John Russell was aware of this fact. Sir James Pakenham, however, the British negotiator, claimed subsequently that none of these gentlemen had sufficient knowledge of the geography of the region to define the exact line of boundary, and all he and the rest knew about it was that “it was to run through the middle of the channel which separates the continent from Vancouver Island.”<sup>2</sup>

<sup>1</sup> I give this statement on the sole authority of Barrows's “Oregon,” pp. 301, 302, American Commonwealth Series, but am not in a position to verify it.

<sup>2</sup> See an essay by Lieutenant-Colonel Coffin in the *Canadian Monthly* for 1876, “How Treaty-Making Unmade Canada,” p. 356. Also a debate in the Royal Colonial Institute, 1872-73, vol. iv., pp. 31-45.



These statements appear to contradict one another, though the weight of testimony is in favor of the contention that the Haro channel was known in 1846. One thing is quite evident, the British ministers made a decided mistake when they did not choose the middle of the great channel at the very outset. At all events, as usual in all negotiations on this continent, the statesmen of the United States, always on the alert for an advantage, won the day. However, with the possession of Vancouver in its entirety, Canada can still be grateful, and San Juan is now only remembered as an episode of diplomacy, which has practically closed the long series of perplexing boundary questions that have arisen since 1783. The United States can be well content with the grand results of their treaties and purchases. They have won in a hundred years or so the former possessions of Spain and France in the Mississippi valley, a large portion of New Brunswick, a tract of four millions of acres to the west of Lake Superior in the settlement of the Northwest boundary—another result of Daniel Webster's astuteness,—and the magnificent region now divided among the States of Oregon, Washington, and Idaho. And we may add another acquisition of theirs—insignificant from the point of view of territorial area, but still illustrative of the methods which have won all the great districts we have named—Rouse's Point, "of which an exact survey would have deprived" the United States, according to Mr. Schouler in his excellent history.<sup>1</sup> The question of the Alaska boundary alone remains unsettled, but it is a mere matter of exact surveying, and Canada will be careful not to lose anything in that region after the experience just mentioned.

During this period the fishery question again assumed considerable importance. The imperial government had supported the provincial governments in their efforts to keep United States fishermen from their fishing grounds under the terms of the convention of 1818. The government at Washington then began to raise the issue that the three miles' limit to which their fishermen could be confined

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<sup>1</sup> Schouler "History of the United States," iv., 401.

should follow the sinuosities of the coasts, including bays; the object being to obtain access to the valuable mackerel fisheries of the Bay of Chaleurs and other waters claimed to be exclusively within the territorial jurisdiction of the maritime provinces. The imperial government generally sustained the contention of the provinces—a contention practically supported by American authorities in the case of Delaware, Chesapeake, and other bays on the coasts of the United States—that the three miles' limit should be measured from a line drawn from headland to headland of all bays, harbors, and creeks. In the case of the Bay of Fundy, however, the imperial government allowed a departure from this general principle when it was urged by the Washington government that one of its headlands was in the territory of the United States, and that it was an arm of the sea rather than a bay. The result was that foreign fishing vessels were only shut out from the bays on the coasts of Nova Scotia and New Brunswick within the Bay of Fundy. All these questions were, however, placed in abeyance, for twelve years, by the Reciprocity Treaty of 1854, which opened up the provincial fisheries to the people of the United States, on condition of free trade between the provinces and that country in certain natural products of the mines, fisheries, and farms, of the two peoples. This measure was in itself an acknowledgment of the growing importance of the provinces, and of the large measure of self-government now accorded to them. The treaty only became law with the consent of the provincial legislatures; and, although the Canadian governments were not directly represented by any of their members, the governor-general, Lord Elgin, who personally conducted the negotiations on the part of England at Washington, in this as in all other matters touching colonial interests, was assisted by the advice of his responsible ministers. The treaty lasted until 1866, when it was repealed by the action of the United States in accordance with the provision bringing it to a conclusion after one year's notice from one of the parties interested.

During the twelve years of its existence the United States exported to British North America home products to the value of \$300,808,370, and foreign goods to the value of \$62,379,718, or a total export of \$363,188,088. The imports from the provinces into the United States amounted to \$267,612,131. These figures, therefore, show a balance in favor of the United States of \$95,575,957.<sup>1</sup> This statement, however, does not take into account the value of the provincial fisheries opened up to the fishermen of New England, but it may be estimated from the fact, as stated by Mr. Derby, a recognized authority in the United States on those subjects, that "during the two last years of the Reciprocity Treaty the United States had fishing in the Gulf of St. Lawrence and the Bay of Chaleurs no less than six hundred sail, which must have taken fish to the amount of \$4,500,000," and that "nearly one-fourth of the United States fishing fleet, with a tonnage of 40,000 to 50,000 tons, worth \$5,000,000 to \$7,000,000 annually, fish near the three-miles' limit of the provinces"—"near" being evidently Mr. Derby's euphemism for "within."<sup>2</sup>

The causes which led to the repeal of a treaty so largely advantageous to the United States have been long well understood. The commercial classes in the Eastern and Western States were on the whole favorable to an enlargement of the treaty, so as to bring in British Columbia and Vancouver Island, now colonies of the Crown, and to include certain other articles the produce of both countries,<sup>3</sup> but the real cause of its repeal was the prejudice in the North against the provinces for their supposed sympathy for the Confederate States during the war of the Rebellion. A large body of men in the North believed that the repeal of the treaty would sooner or later force the provinces into annexation, and a bill was actually introduced in the House

<sup>1</sup> See speech of Sir Charles Tupper in Canadian House of Commons, *Can. Hansard*, 1888, vol. i., p. 674.

<sup>2</sup> See Proceedings of Royal Colonial Institute, 1872-3, pp. 56, 60.

<sup>3</sup> See Watkins's "Recollections of Canada and the United States," chap. xviii.

of Representatives providing for the admission of those countries—a mere political straw, it is true, but still showing the current of opinion in some quarters in those days. The raid made by a few rash Confederates who had found refuge in Canada, on the St. Albans Bank, in the State of Vermont, deeply incensed the people of the North, though at no time could it be proved that the Canadian authorities had the least suspicion of the proposed expedition. On the contrary, they brought the culprits to trial, placed companies of volunteers along the frontier, and even paid a large sum of money in acknowledgment of an alleged responsibility when some of the stolen money was returned to the robbers on their release by a Montreal magistrate.<sup>1</sup> When we review the history of those times and consider the difficult position in which Canada was necessarily placed, it is remarkable how honorably her government discharged its duties of a neutral between the belligerents.<sup>2</sup> It is well, too, to remember how large a number of Canadians fought in the Union armies—twenty against one who served in the South. No doubt the position of Canada was made more difficult at that critical time by the fact that she was a colony of Great Britain, against whom both North and South entertained bitter feelings by the close of the war; the former mainly on account of the escape of Confederate cruisers from English ports, and the latter because she did not receive active support from England. The North had been also much excited by the promptness with which Lord Palmerston had sent troops to Canada when Mason and Slidell were seized on an English packet on the high seas, and the bold tone held by some Canadian papers when it was doubtful if the prisoners would be released. But the Confederate envoys were surrendered, not by a frank admission that Captain Wilkes had violated the sound principles which the United States had always main-

<sup>1</sup> See Dent's "Canada," ii., 446, 447.

<sup>2</sup> Mr. Secretary Seward wrote on one occasion in a letter to the British representative at Washington: "I think it proper to let you know that the President regards with sincere satisfaction the conduct and proceedings of the Canadian authorities." See *infra*, p. 131.

tained in vindication of neutral rights, but by a mere technical plea that the officer in question had neglected to bring the *Trent* into a prize court, and to submit the whole transaction to judicial examination.<sup>1</sup>

Contemporaneously with the repeal of the Reciprocity Treaty came the raids of the Fenians—bands of men who did dishonor to the cause of Ireland, under the pretence of striking a blow at England through Canada, where their countrymen have always found happy homes, free government, and honorable positions. For months before the invasion American newspapers were full of accounts of the assembling and arming of these bands on the frontier of Canada. They invaded the Dominion, property was destroyed, and a number of Canadian youth lost their lives, and O'Neil and his collection of disbanded soldiers and fugitives from justice were forced back to the country whose neutrality they had outraged. The United States authorities, with their usual laxity in such matters, had calmly looked on while all the preparations for the raids were in progress, in the presence of large bodies of militia who could in an hour have prevented these outrages on a friendly territory. Proclamations were at last tardily issued by the government when the damage had been done, and a few raiders were arrested; but the House of Representatives immediately sent a resolution to the President, requesting him "to cause the prosecutions, instituted in the United States courts against the Fenians, to be discontinued if compatible with the public interest"—a request which was complied with. The writer on international law from whom we have already quoted, says that "it would be difficult to find a more typical instance of responsibility assumed by a State through the permission of open acts and of notorious acts, and by way of complicity after the acts."<sup>2</sup>

<sup>1</sup> Mr. Blaine dissents ("Twenty Years of Congress," vol. i., p. 585) from the ground on which Mr. Seward placed the surrender of the Confederate envoys, and thinks he should have boldly admitted a violation of the right of neutrals.

<sup>2</sup> Hall, "International Law," p. 215, note. This same writer also refers to the disposition shown by the United States in 1879 to press State responsibility



These raids took place at a critical period of Canadian history—the eve of Confederation. The time had come for enlarging the sphere of the political action of the provinces and giving them larger responsibilities. The repeal of the Reciprocity Treaty and the Fenian invasions helped to stimulate public sentiment in favor of a political union which would enable them to take common measures for their general security and development. In 1867, as the result of the conference of provincial delegates who assembled at Quebec in the autumn of 1865, the imperial parliament passed an act establishing a federal union between the provinces of Canada (now divided into the provinces of Ontario and Quebec), New Brunswick, and Nova Scotia, and providing for the acquisition of the Northwest Territories and the admission of other provinces. This Union was of a federal character—a central government having the control of national or common objects, and provincial governments having control of purely provincial, municipal, and local matters. In 1867–8 the first parliament of United Canada met at Ottawa, and the provincial legislatures at their respective seats of government; and the Dominion of Canada entered on a career of political and industrial development which is now making its influence felt over half a continent.

Before I proceed to review some of the important results of this federal union, it is necessary that I should refer briefly to the relations between the Dominion and the United States for the past twenty-three years. Before and since the union, the government of Canada have time and again made efforts to renew a commercial treaty with the government at Washington. In 1865 and 1866 Canadian delegates were prepared to make large concessions but were unable to come to terms chiefly on the ground, that the imposts which it was proposed by the committee of ways and means to lay upon the products of the British provinces on

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to the utmost extreme against Great Britain, when Sitting Bull and some Sioux Indians took refuge in the Northwest Territories of Canada, and there was some reason to expect that they would make incursions into the United States territory. See Wharton, *Digest*, Sec. 18.

their entry into the markets of the United States were such as, in their opinion, would be, "in some cases, prohibitory, and certainly seriously interfere with the natural course of trade." The delegates were reluctantly brought to the conclusion that "the committee no longer desired trade between the two countries to be carried on upon the principle of reciprocity."<sup>1</sup> The result of these negotiations was to convince the people of Canada that, while they should be always ready to listen to any fair proposition from the United States in the direction of reciprocity, they should at the same time seek to open up as many new avenues of trade as possible and not depend on the caprice of their neighbors. In 1869 Sir John Rose made an effort in the same direction, but was met by the obstinate refusal of the Republican party, then as always highly protective. President Grant during that year, in a message to Congress, formulated the policy of his party by the emphatic statement that "the question of renewing a treaty for reciprocity of trade between the United States and the British Provinces on this continent, has not been favorably considered by the administration." The advantages of a treaty "would be wholly in favor of the British Provinces, except possibly a few engaged in the trade between the two sections."

All this while the fishery question was assuming year by year a form that was most irritating to the two countries. The headland controversy was the principal difficulty, and the English government, in order to conciliate the United States at a time when the Alabama question was a subject of anxiety, induced the Canadian government to agree, very reluctantly it must be admitted, to shut out foreign fishing vessels only from bays less than six miles in width at their entrances. In this, as in all other matters, however, the Canadian authorities acknowledged their duty to yield to considerations of imperial interests, and acceded to the wishes of the imperial government in almost every respect except to actually surrender their territorial rights in the fisheries. They issued licenses to fish, at low rates, for several

<sup>1</sup> See Gray, "Confederation," pp. 294-304. Also Watkins, pp. 412, 413.

years, only to find eventually that the American fishermen did not think it worth while buying these permits when they saw that the regulations for protecting the fisheries could be evaded with little difficulty. The result of the correspondence that went on for several years was the Washington Conference or Commission of 1871 which, in its inception, was intended to settle the fishery question primarily, but which actually gave the precedence to the Alabama difficulty—then of most concern in the opinion of the London and Washington governments.<sup>1</sup> With the settlement of the Alabama question, and the three new rules laid down at the outset as the basis of arbitration, we have nothing to do in this review, and can only say that Canadians as well as Englishmen might well be satisfied that a troublesome international difficulty was at last amicably arranged. The representatives of the United States would not consider a proposition for a renewal of another Reciprocity Treaty on the basis of that of 1854. The questions arising out of the convention of 1818 were not settled by the commission, but were practically laid aside for ten years by an arrangement providing for the free admission of salt-water fish into the United States, on condition of allowing the fishing vessels of that country free access to the Canadian fisheries. The free navigation of the St. Lawrence was conceded to the United States in return for the free use of Lake Michigan and of certain rivers in Alaska. The question of the coasting trade, long demanded by the maritime provinces, was not considered, and while the canals of Canada were opened up to our neighbors on the most liberal terms, the Washington government contented themselves with a barren promise in the treaty to use their influence with the authorities of the States to open up their artificial waterways to Canadians. The Fenian claims were abruptly laid aside, although had the same principle of "due diligence" that was laid down in the new rules been applied to this question, the government of the United States would have been mulcted in heavy damages.

<sup>1</sup> See Proceedings of Royal Colonial Institute, 1872-73, pp. 7-30.

This question above all others should have been settled on terms which would have shown the disposition of a great country to do justice to a neighbor who had, under the most trying circumstances, kept a due check upon her sympathies, so that even Mr. Caleb Cushing<sup>1</sup> was unable to detect a flaw in her conduct. In this, however, as in many other negotiations with the United States, Canada felt she must make sacrifices for the empire, whose government wished all causes of irritation between England and the United States removed as far as possible by the treaty. One important feature of this commission was the presence, for the first time in the history of treaties, of a Canadian statesman. The astute premier of the Dominion, Sir John Macdonald, was chosen as one of the English High Commissioners, avowedly with the object of acknowledging the interest of Canada in the questions involved. Although he was but one of five English commissioners, and necessarily tied down by the instructions of the imperial state, no doubt his knowledge of Canadian questions was of great service to Canada during the conference. If the treaty finally proved more favorable to the Dominion than it at first appeared to be, it was owing largely to the clause which provided for a reference to a commission of the question, whether the United States would not have to pay the Canadians a sum of money, as the value of her fisheries over and above any concessions made her in the treaty. The result of this commission was a payment of five millions and a half of dollars to Canada and Newfoundland, to the infinite disappointment of the politicians of the United States who had been long accustomed to have the best in all bargains with their neighbors. No fact shows more clearly the measure of the local self-government at last won by Canada, and the importance of her position in the empire, than the fact that the English government recognized the right of the Dominion government to name the commissioner who represented Canada on an arbitration

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<sup>1</sup> He was one of the counsel, in 1872, for the United States, at the Geneva Conference, for the settlement of the Alabama claims.

which decided a question of such deep importance to her interests. We see, then, as Canada gained in political strength, she obtained an influence<sup>1</sup> in imperial councils which Mr. Fish resented at the time, and was able to obtain that consideration for her interests, which was entirely absent in the days of her infancy and weakness.

The clauses in the Washington treaty relating to the fisheries, and to trade with Canada, remained in force for twelve years, and were then repealed by the action of the United States government.<sup>2</sup> During its existence the Canadian ministry sent to Washington one of the ablest public men of the Dominion—a man especially versed in matters of trade and finance—with the object of arranging, if possible, a measure of reciprocity with the United States. Mr. George Brown was quite ready, presumably with the assent of his government, not only to revive the old reciprocity treaty, but to extend its terms largely, so as to admit various other articles free of duty into Canada; but the proposed arrangement never passed the Senate of the United States. With the expiry of the treaty of 1871, on the first of July, 1885, the relations between Canada and the United States again assumed a phase of great uncertainty. President Cleveland showed every disposition, until near the close of his administration, to come to some satisfactory adjustment of the question at issue, and suggested in one of his messages that it was "in the interests of good neighborhood and commerce" that a commission should be "charged with the consideration and settlement upon a just, equitable, and honorable basis, of the entire question of the fishing rights of

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<sup>1</sup> See Blaine, "Twenty Years of Congress," vol. ii., p. 627.

<sup>2</sup> Article 29, allowing goods to pass in bond through the two countries, was not repealed in express terms when the fishery articles were terminated, but has been allowed to remain in force ever since. President Cleveland was among those who maintained the opinion that it was actually abrogated, and in a message to Congress, in 1888, he recommended "immediate legislative action, conferring upon the executive the power to suspend by proclamation the operation of all laws and regulations permitting the transit of goods in bond, across or over the territory of the United States to or from Canada." Happily for all the interests involved, the bonding system still remains in force.



the two countries." Canada, from 1885, adhered to the letter of the convention of 1818, and allowed no fishing vessels to fish within the three miles' limit, to transmit cargoes of fish in their ports, or to enter them for any purpose, except for shelter, wood, water, and repairs. For the infraction of the treaty several vessels were seized, and more than one of them condemned. A clamor was raised in the United States on the ground that the Canadians were wanting in that spirit of friendly intercourse which should characterize the relations of neighboring peoples. The fact is, the Canadians were bound to adhere to their legal rights,—rights which had been always maintained before 1854; which had remained in abeyance between 1854 and 1866; which naturally revived after the repeal of the reciprocity treaty of 1854; which again remained in abeyance between 1871 and 1885; and were revived when the United States themselves chose to go back to the terms of the convention of 1818. The Canadian people had time and again shown every disposition to yield a large portion of their just rights—first by the treaty of 1854, and secondly by the treaty of 1871—in return for a substantial commercial arrangement and a due acknowledgment of the value of their fisheries; but they were not prepared to see their territorial waters recklessly and unlawfully invaded by a class of men who, since 1783, seemed to consider they had a perfect claim to the Canadian fishing-grounds. If there was a system of government in the United States, such as exists in England and Canada, requiring unity of action between the legislative and executive authorities, perhaps we would not have to record such unsatisfactory results as followed President Cleveland's efforts to adjust satisfactorily the relations of his country with Canada. Congress passed a measure before the presidential election of 1888, which, had it ever been carried out by the President, meant non-intercourse with the Dominion,—a measure which may have resulted in consequences to both countries I do not like to consider for a moment. It would be well to remind the politicians in Congress that such measures are often like the Australian

boomerang, and that the experience of the non-intercourse acts that preceded the war of 1812 can hardly sanction a repetition of such a policy in these later times.<sup>1</sup> The repeal of the bonding system and interference with the transportation facilities of Canadian railways could hardly benefit the commerce of the United States, whatever might be the effect of such an unwise policy on Canada itself.

Both President Cleveland and Mr. Secretary Bayard, in a statesmanlike spirit, obtained the consent of England to a special commission to consider the fishery question. Sir Sackville West, Mr. Joseph Chamberlain, and Sir Charles Tupper represented England; Mr. Bayard, then Secretary of State, Mr. Putnam, of Maine, and Mr. Angell, of Michigan University, represented the United States. Sir Charles Tupper, the present High Commissioner of Canada in London, is one of the ablest statesmen of the Dominion, and as a Nova Scotian was specially qualified to guard Canadian interests. At the opening of the commission, he attempted to obtain a basis of action on the general proposition which he submitted that "with the view of removing all causes of difference in connection with the fisheries, the fishermen of both countries shall have all the privileges enjoyed during the existence of the fishery clauses of the Washington Treaty of 1871, in consideration of a mutual arrangement providing for freedom of commercial intercourse between the United States and Canada." The United States commissioners refused to consider this proposition, on the ground "that such a measure of commercial intercourse would necessitate an adjustment of the present tariff of the United States by congressional action; which adjustment the American plenipotentiaries consider to be manifestly impracticable of accomplishment through

<sup>1</sup> "The restrictive system, as a mode of resistance," said Calhoun in a remarkable speech, which evokes the commendation of Henry Adams in his admirable "History" (vi., 233), "and a means of obtaining a redress of our wrongs, has never been a favorite one with me. . . . I object to the restrictive system, and for the following reasons: because it does not suit the genius of our people or that of our government or the geographical character of our country."

the medium of a treaty under the circumstances now existing." However, the commissioners agreed unanimously to a treaty, which was essentially a compromise, as indeed all such treaties must be in the nature of things. Foreign fishermen were to be at liberty to go into any waters where the bay was more than ten miles wide at the mouth, but certain bays, including Bay Chaleurs, were expressly excepted in the interest of Canada from the operation of this provision. The United States did not attempt to acquire a right to fish in the inshore fishing-grounds of Canada—that is, within three miles of the coasts,—but these fisheries were to be left for the exclusive use of the Canadian fishermen. More satisfactory arrangements were made for vessels obliged to resort to Canadian ports in distress, and a provision was made for allowing American fishing vessels to obtain supplies and other privileges in the harbors of the Dominion whenever Congress allowed the fish of that country to enter free into the market of the United States. President Cleveland in his message submitted the treaty to the Senate, acknowledged that it "supplied a satisfactory, practical, and final adjustment, upon a basis honorable and just to both parties, of the difficult and vexed question to which it relates." The Republican party, however, at that important juncture—just before a presidential election—had a majority in the Senate, and the result was the failure in that body of a measure which, although by no means too favorable to Canadian interests, was framed in a spirit of judicious statesmanship, and, if agreed to, would have settled for all time, in all probability, questions which have too long been sources of irritation to the two countries.<sup>1</sup>

While these events were transpiring, the Dominion of Canada was extending its limits across the continent, developing a great railway system, and making steady strides in the path of national progress. That vast region which

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<sup>1</sup> For a clear, statesmanlike statement of the conditions under which the proposed treaty was negotiated, and of its principal features, see the speech of Sir Charles Tupper, one of the Commissioners, in the *Canadian Hansard*, 1888, vol i.

extends from the head of Lake Superior to the Rocky Mountains, and from the Lake of the Woods and the 49° of north latitude to Hudson Bay and the Arctic Ocean, the home of the Indian and the fur-trader for two centuries, whose capabilities for settlement had been studiously concealed from the world by a great fur monopoly, was added to the territory of the Dominion, and the new province of Manitoba was established with a complete system of local government. Prince Edward Island, a rich spot in the Gulf of St. Lawrence, came into the Union, and the Dominion was extended as far as the Pacific Ocean by the admission of British Columbia. Two noble islands, with great fisheries and coal mines, Cape Breton and Vancouver, now guarded the Atlantic and Pacific shores of the Dominion. A great line of railway spanned the continent from the Strait of Canso to the Gulf of Georgia, as a result of the new energy and national spirit developed by the union. Population flowed slowly, yet steadily into the territories, and there is now a cordon of cities, towns, and villages stretching from Port Arthur at the head of Lake Superior to Vancouver, that city of rapid growth on the Pacific Coast. The great tide of European emigration, it is true, has continued to flow into the United States, and it is not to be expected that it can be diverted in a day into that great western country of Canada which offers such superior facilities for the cultivation of wheat and other cereals, and for the raising of all classes of stock. In the nature of things, as the wheat lands of the United States become exhausted—and that time is probably not very far off,—the Territories of Canada must attract the surplus population of Europe, and even large numbers of people from the States themselves, where a reckless system of agriculture has been gradually impoverishing the land.

As a sequence of the acquisition of British Columbia Canada has been compelled to take an active part in the consideration of a question of some gravity that has arisen between England and the United States, in consequence of a cruiser of the latter country having forcibly seized and carried into

a port of Alaska certain Canadian vessels engaged in the seal fisheries of the great body of sea known in these times as Behring Sea. A perusal of the blue book containing the correspondence on the subject between London, Ottawa, and Washington, shows that from the beginning to the end of this controversy the imperial government has consulted with the government of Canada on every point material to the issue. As an English statesman, determined to maintain the interests of all sections of the empire, Lord Salisbury has paid every respect to the opinions and statements of the Canadian ministry in relation to a matter which deeply affects Canada, and has pursued a course throughout the negotiations which has done much to strengthen the relations between the parent state and the dependency. Without going fully into this vexed question, I shall simply state the principal arguments advanced by the English and Canadian authorities in maintaining their case,—arguments which are irrefutable, because based on substantial facts, and on well understood principles of the law of nations.

1. That certain Canadian schooners, fitted out in British Columbia, and peaceably and lawfully engaged in the capture of seals in the Northern Pacific Ocean, adjacent to Vancouver Island, Queen Charlotte Islands, and Alaska,—a portion of the territory of the United States acquired in 1867 from Russia—were seized in the open sea, out of sight of land, by a United States cutter, although being at the time at a distance of more than sixty miles from the nearest land. These vessels were taken into a port of Alaska, where they were subjected to forfeiture, and the masters and mates fined and imprisoned.

2. That the facts of these seizures showed the English and Canadian governments that the authorities of the United States appeared to lay claim to the sole sovereignty of that part of Behring Sea lying east of the westerly boundary of Alaska, as defined in the first article of the treaty between the United States and Russia in 1867 by which Alaska was ceded to the United States, and which includes a stretch of



sea extending in its widest part some 600 or 700 miles easterly from the mainland of Alaska.

3. That these proceedings were in direct violation of established principles of the law of nations, as urged in former times by the United States.

4. That the United States, through their Secretary of State, Hon. John Quincy Adams, emphatically resisted in 1822 a claim made by a Russian ukase, to sovereignty for one hundred miles distant from the coast and islands belonging to Russia in the Pacific Ocean, north of the fifty-first degree of latitude. That Mr. Adams deemed it a sufficient answer to this claim to point out the fact that "the distance from shore to shore on that sea in latitude  $51^{\circ}$  north latitude is not less than  $90^{\circ}$  of longitude, or 4,000 miles." That Russia subsequently relinquished her indefensible position and agreed to a convention first with the United States, and subsequently with England, recognizing the rights of navigation and fishing by those nations in any part of the Behring Sea within the limits allowed by the law of nations.

5. That the claim that Behring Sea is "a landlocked sea," with a firm line of pelagic boundary, is manifestly absurd from the fact that it is about nine hundred miles from the Aleutian Islands to the Asiatic coast of Russia. That even in the case of the Sea of Okhotsk on which such a contention might be raised with a semblance of reason the government of the United States as late as 1867 remonstrated with the Russian government in consequence of a report being made to them that American vessels had been interfered with whilst engaged in their lawful operations in that body of water—a report which was subsequently shown to be without foundation since the Russian government had not taken any restrictive measures with regard to the waters in question. That the United States, as already shown in this paper, took similar ground in the case of the Bay of Fundy, although it cannot come within the category of an open sea.

6. That the municipal legislation of the United States under which the Canadian vessels were seized and condemned and their masters and mates fined and imprisoned,

in an Alaskan court, could have no operation whatever against vessels in the Behring Sea, which is not in the territorial waters of United States; that any claim to exclusive jurisdiction on such seas is opposed to international law, and no such right can be acquired by prescription.

7. That the Canadian vessels captured in the Behring Sea were not engaged in any proceeding *contra bonos mores*, as urged by Mr. Blaine, inasmuch as such a rule is only admissible in the case of piracy or in pursuance of a special international agreement. All jurists of note have acknowledged this principle, and President Tyler, in a message to Congress in 1843, pressed the point that with the single exception of "piracy" no nation has in the time of peace any authority to detain the ships of another upon the high seas on any pretext whatever outside of territorial jurisdiction." That discreditable traffic, the slave-trade, might well be considered *contra bonos mores*, but the government of the United States would not consent to any English ship visiting and searching a suspected ship floating their flag, and yet the capture of seals is now a more serious affair than human slavery in the estimation of the Washington Secretary of State.

8. That the English and the Canadian governments—who are one in this matter—are quite ready to concede to the United States, as asked for, "the same rights and privileges on the lands and waters of Alaska which were always conceded by all friendly nations to the Empire of Russia," inasmuch as the British government have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of Behring Sea, in strict accord with the views which, previous to the present controversy, were consistently and successfully maintained by the United States."

9. That the British government have always claimed the freedom of navigation and fishing in the waters of Behring Sea outside of the usual territorial marine league from the coast; that it is clearly impossible to admit that, "a public right to fish or pursue any other lawful occupation on the

high seas can be considered to be abandoned by a nation from the mere fact that for a certain number of years it has not suited the subjects of that nation to exercise it"; and it must be remembered that British Columbia has come into existence as a colony, and her sealing industry has become important only within a very recent period.

10. That the Canadian government in their desire to maintain as friendly relations as possible with the United States have stated to the imperial government their readiness to consider any international arrangement for the proper preservation of the seal, but before such an inquiry is agreed to they expect that the question raised by the seizures of the Canadian vessels, shall be settled according to the law of nations, and that the claim of indemnity now in the hands of Her Majesty's government shall be fully settled.

11. That Her Majesty's government are quite ready to agree that the whole question of the legality of the seizures in the Behring Sea and the issues dependent thereon shall be referred to an impartial arbitration.<sup>1</sup>

From this summary it will be seen that the issues raised by the English and Canadian governments are very clear—that the seizures of Canadian vessels were illegal—that the United States have no special or exclusive rights in the open sea under any recognized principle of international law. The whole tenor of Mr. Blaine's later despatches has been in the direction of the indefensible ground that Behring Sea and its fisheries occupy an altogether exceptional position among the seas and fisheries of the world, but no authority of note, American or European, has supported his argument, and it is impossible to explain how the Secretary of State could raise the issue of an offence against good morals when it can have no application to the fisheries in question, and could in any case have no value or force except by international agreement—an agreement which would only bind the parties who might make it.

<sup>1</sup> See "Correspondence Respecting the Behring Sea Fisheries, 1886-90." Presented to Parliament, August, 1890.

If the United States have any exclusive rights beyond those based on intelligible and generally admitted principles of reason and the law of nations, let them be explained and settled in a court of arbitration; and if there is any necessity for a close season let it be decided by experts in such matters. The question in itself chiefly involves the profits of a commercial monopoly, and were it not for the extraordinary pretensions urged by the United States government—pretensions which they would have been the first to disavow—indeed were the first to repudiate in the past, and which no nation could under any circumstances maintain for a moment in the face of the world, no difficulty whatever could have occurred in a matter which should have been long ere this settled at once by common agreement.<sup>1</sup>

The part that Canada has taken in this matter is in itself an illustration of her importance in imperial councils and of the vastness of her territorial domain, which now stretches from the Atlantic to the Pacific. One hundred and thirty years ago the term "Canada" represented an ill-defined region of country, watered by the St. Lawrence and the great Lakes, inhabited by a few thousand Frenchmen, living chiefly on the banks of the St. Lawrence, and its tributaries. English-speaking people then came into the country, and settled in the maritime provinces, on the St. Lawrence, and

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<sup>1</sup> Since this paper was presented to the American Association the English and Canadian governments have given additional evidence of their desire to settle this vexed question with as little delay as possible by taking the necessary steps through the Canadian Attorney-General for bringing the whole question of the legality of the seizures of Canadian vessels on the high sea before the Supreme Court, the highest tribunal in the United States. After argument the Supreme Court decided to grant the petition of counsel representing the British government for leave to file an application for a writ of prohibition to prevent the District Court of Alaska from carrying out its decree of forfeiture in the case of the schooner *Sayward*, libelled for unlawfully taking seals within the waters of Behring Sea. The next question that arises is, whether the court will decide that the writ of prohibition should issue; and this will be argued in October. It is to be hoped that the court will be able to decide the whole matter on its legal merits. If so, it will be a decided triumph of law over diplomacy, with all its devious ways.

on the Lakes; representative institutions were established, commerce was developed, and, by 1790, five provinces, governed in the English way, were established from Cape Breton to the western limits of Ontario. For many years the indifference of English statesmen and the ignorance which until relatively recent times prevailed with respect to the value of Canada as a home for an industrious people, retarded her material and political development. Isolated provinces, without common aspirations or national aims, had no influence over imperial councils in matters which were arranged by English diplomatists, whilst the federal republic, a union of free, self-governing States, had always in view, the promotion of their national strength and territorial aggrandizement. England, Spain, France, Mexico, and Russia, in turn, contributed their share to her ambition, and more than once, when discontent reigned, and hope was absent, the ability of Canada to hold her own on this continent, in the opinion of not a few, seemed to be steadily on the decline. But self-government in all matters of local concern changed the gloomy outlook to one of brightness and hope, and a spirit of self-reliance developed itself among statesmen and people until Confederation united all the provinces in a union, which alone could enable them to resist the ambition of their restless neighbor. Forty-four States in 1890, with a population of over 62,000,000 of souls, against a population of 4,000,000 in 1790, with a total commerce of exports and imports to the value of \$1,400,000,000, against \$43,000,000 in 1790, with a national revenue of more than \$300,000,000 against \$41,000,000 in 1790, now represent the federal union, once composed of thirteen States, the basis of the nation's greatness. Despite all the powerful influences that have fought against Canada, she has held her own in America. In 1890 a population of 5,000,000, against 1,000,000 in 1840, with a total trade of \$230,000,000, against \$25,000,000 in 1840, and with a national revenue of nearly \$40,000,000 against \$700,000 in 1840, inhabit a Dominion of seven regularly organized provinces, and of an immense territory, now in course of development, stretching from



Manitoba and Ontario to the foothills of the Rocky Mountains, and northerly to a great region watered by the Peace, Athabasca, Slave, and Mackenzie rivers, and possessing a climate and soil, according to recent explorations, capable of supporting millions. This Dominion embraces an area of 3,519,000 square miles, including its water surface, or very little less than the area of the United States, with Alaska, or a region with a width of 3,500 miles from east to west, and 1,400 miles from north to south. The magnificent valley through which the St. Lawrence flows from the Lakes to the ocean, is now the home of prosperous, energetic, and intelligent communities, one of which was founded nearly three centuries ago. A remarkable system of water-ways, consisting mainly of the Red, Assiniboine, and Saskatchewan rivers, extends through the plains of the territories as far as the base of the Rockies, and fertilizes a region whose capabilities for the production of foods is probably not surpassed on this continent. The mountainous country to the north of Lake Superior is rich with copper, nickel, and other valuable minerals, which are already attracting the attention of enterprise in Europe and America. The gold mines of British Columbia are still productive, and the wealth that lies buried in the rocks of that immense province is yet to be discovered. The coal mines of Vancouver have no rivals on the Pacific coast, while those of Nova Scotia, and the Territories are capable of infinite development. The fisheries have long been the envy of the United States, and the agricultural production is as great as that of the most favored sections of that country. Its climate and resources are those of the Northern, Middle, and Western States,—the best sources of a nation's energy and wealth. No dangerous question like slavery exists to complicate the political and social conditions of the union, and although there is a large and increasing French Canadian element in the Dominion—the heritage of the old French *régime* in America,—its history so far should not create fear as to the future, except in the minds of sectarian and sectional pessimists, who are too often raising gloomy phantoms of their own imaginings.

Whilst this element naturally clings to its national language, and special institutions, yet it has, under the influence of a complete system of local self-government, taken as active and earnest a part as the English element in establishing and strengthening the confederation. The expansion of the African race in the Southern States is a question of the future for the federal republic, which its statesmen will find much more difficult than any that Canadian statesmen have to solve on account of the existence of a French nationality, who possess the lively intelligence of their race, exercise all the privileges of self-government, and, above all things, well comprehend that their true interests lie in a prosperous Canadian confederation, and not in union with a country where they would eventually lose their national identity.

The whole history of Canada, indeed, proves that there has been always among the people, not merely an attachment to England and her institutions, but a latent influence which, in times of peace as in times of peril, has led them onward in a path of national development which every decade of years has diverged more and more from the federation of States to their south. The statesmen and people generally of that country have been always remarkably ignorant not only of the history, of the political institutions, and of the political sentiments of the Canadians, and have never appreciated the tendency of this political development which is in the direction of a new nationality, not inferior to the United States in many elements of a people's greatness. Democracy as a form of government has, in Canada as in other parts of the world where representative institutions exist, made its influence felt in the enlargement of political rights and in the extension of the franchise, and sometimes unhappily in Canada as in the neighboring country, partly obscures and misleads public opinion in moments of bitter political controversy. Happily the principles on which Canadian government is based are sound, and political morality is yet on the whole higher than in the neighboring country. The federal Union gives expansion to the national energies of the whole dominion, and at the same time should

afford every security to the local interests of each member of the federal compact. In all matters of Dominion concern, Canada is a free agent. While the Queen is still at the head of the executive authority, and can alone initiate treaties with foreign nations—that being an act of complete sovereignty—and appeals are still open to her privy council from Canadian courts within certain limitation, it is an admitted principle that so far as Canada has been granted legislative rights and privileges by the imperial parliament—rights and privileges set forth explicitly in the British North America Act of 1867—she is practically sovereign in the exercise of all those powers as long as they do not conflict with the treaty obligations of the parent state or with imperial legislation directly applicable to her with her own consent. It is true the Queen in council can veto acts of the Canadian parliament, but that supreme power is only exercised under the conditions just stated, and can no more be constitutionally used in the case of ordinary Canadian statutes affecting the Dominion solely, than can the sovereign to-morrow veto the acts of the imperial parliament—a prerogative of the crown still existent but not exercised in England since the days of Queen Anne, and now inconsistent with modern rules of parliamentary government. England exercises a certain supervision over the affairs of the Dominion through a governor-general, who communicates directly with an imperial secretary of state, but the English government in every matter directly affecting Canada acts,—as for instance in the negotiations respecting the fisheries and Behring Sea,—in unison with the Canadian ministry whose statements are carefully considered since they represent the sentiments and interests of the Canadian people who, as subjects of the empire, are entitled to as much weight as if they lived in the British Isle. In a limited sense there is already a loose system of federation between England and her dependencies. The central government of England, as the guardian of the welfare of the whole empire, co-operates with the several governments of her colonial dependencies, and by common

consultation and arrangement endeavors to come to such a determination as will be to the advantage of all the interests at stake. In other words, the conditions of the relations between England and Canada are such as to ensure unity of policy as long as each government considers the interests of England and the dependency as identical, and keeps ever in view the obligations, welfare, and unity of the Empire at large. Full consultation in all negotiations affecting Canada, representation in every arbitration and commission that may be the result of such negotiations, are the principles which have been admitted by England of late years in acknowledgment of the development of Canada and of her present position in the empire, and any departure now from so sound a doctrine would be a serious injury to the imperial connection and an insult to the ability of Canadians to take a part in the great councils of the world.

Canada then is no longer a mere Province, in the old colonial sense of the term, but a Dominion possessing many of the attributes of a self-governing nation. Her past history is not that of a selfish people, but of one ever ready to make concessions for the sake of maintaining the most friendly relations between England and the United States. Every treaty that has been made with the United States has been more or less at the expense of some Canadian interest, but Canadians have yielded to the force of circumstances, and to reasons of national comity and good neighborhood. Canada has been always ready to agree to any fair measure of reciprocal trade with her neighbors, but this paper has shown that all her efforts in that direction have been fruitless for years.<sup>1</sup> One thing is certain, and that is, the Canadian people, since 1866, have been taught the great lesson of self-reliance, and the necessity of developing all those

<sup>1</sup> It is proper to state here that, in addition to the several efforts for a renewal of reciprocity that have been mentioned in this paper, the Government of Canada in 1879 placed on the statute book what has been called "a standing offer" that certain American products should be proclaimed free of duty in Canada whenever similar Canadian products were allowed to enter free into the United States. But this enactment practically proved a nullity.—  
"See Revised Statutes of Canada," c. 33, sec. 9.

qualities which are essential to the unity and security of their Dominion.<sup>1</sup> Conscious of the success that must be the reward of courage and energy, Canada enters upon the future with confidence and tranquillity, and asks nothing from her great competitor except that consideration, justice, and sympathy which are due to a people whose work on this continent has just begun, and whose achievements may yet be as remarkable as those of the great federation to their south. The same mysterious Providence that has already divided the continent of America as far as the Rio Grande between Canada and the United States, and has in the past prevented their political fortunes becoming one, still forces the Canadian communities with an irresistible power to press onward until they realize those high conceptions which their statesmen and people already imagine for them in a not distant future; but whilst the stream of Canadian development refuses to turn aside from its natural channel and swell the current that is ever carrying forward the federal republic to so high a position among the nations, Canadians on this eve of another year, with its new hopes and aspirations, wish God-speed to their neighbors in their unparalleled career and trust, as the months pass by, that the clouds which hang over the two countries may disappear, and a bright prospect of continuous friendship may open before them both—

“— As the varying tints unite  
And form in heaven's light  
One arch of Peace.”

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<sup>1</sup> The present governor-general of Canada, Lord Stanley, of Preston, speaking from the high standpoint of an English statesman anxious for the welfare of Canada, has of late seized every opportunity that has offered itself of pressing upon Canadians the necessity of cultivating this spirit of self-reliance and of facing all the difficulties of the present and future “in a manly and hopeful spirit.” Sympathetic speeches of this character keep alive an English feeling and maintain the unity of the empire.